

GL 341
WRI



107214
LBSNAA

ने राष्ट्रीय प्रशासन अकादमी

Academy of Administration

मसरो

MUSSOORIE

पुस्तकालय

LIBRARY

अबाप्ति संख्या

Accession No.

~~10403~~

107214

वर्ग संख्या

Class No.

341

पुस्तक संख्या

Book No.

Wri

**INTERNATIONAL LAW AND
THE UNITED NATIONS**

INTERNATIONAL LAW AND THE UNITED NATIONS

by

QUINCY WRIGHT

Professor of International Law,

University of Virginia

Formerly Professor of International Law,

University of Chicago

Visiting Professor, Indian School of International

Studies, New Delhi

Under the auspices of the Indian

School of International Studies



ASIA PUBLISHING HOUSE

BOMBAY . CALCUTTA . NEW DELHI

MADRAS . LONDON . NEW YORK

© INDIAN SCHOOL OF INTERNATIONAL STUDIES
NEW DELHI

1960

PRINTED IN INDIA

BY PYARELAL SAH AT THE TIMES OF INDIA
PRESS, BOMBAY, AND PUBLISHED BY P. S.
JAYASINGHE, ASIA PUBLISHING HOUSE, BOMBAY

INTRODUCTION

THIS volume is based on lectures given by the author in 1956 at the Inter American Academy of Comparative and International Law at Habana, Cuba, and published in the *Cursos Monograficos* of the Academy, Volume v, pp. 319 ff. The author thanks the Academy for permitting the use of this material which has been revised and brought up to date after the author's lectures at the Indian School of International Studies in 1957-58.

The book is not a treatise on International Law nor a treatise on the United Nations but an effort to determine the role of both in meeting the problems of the atomic age.

Modern International Law began to develop among European states in the 16th century. Although stimulated by the European discovery of America and Asia at that time, and although American states and a few Asian and African states were recognized as members of the Community of Nations in the 18th and 19th centuries, it was not until the 20th century that many states of non-European civilization were recognized as equal members of that Community. The shrinking of distances in the world, the changed character of war and the acceleration of change, all resulting from recent inventions; and the importance of ideologies and civilizations different from those of western Europe, resulting from the rise of communism, the disintegration of empires, and the increasing number of oriental states in the Community of Nations, have required modifications of traditional international law. Some of these modifications have been effected by the general acceptance of the principles of the United Nations Charter.

The Charter itself, however, was completed before the first atomic bomb was exploded and before the Bandung Conference had given the Asian and African states the opportunity to declare their principles of international relations. A dozen years' experience in the operation of the

Charter indicates that changes or new interpretations of international law are needed if the United Nations is to realize its purposes.

This volume is critical of both traditional international law and the United Nations but in a constructive spirit. The conditions of the world require a more effective international law and a more effective United Nations. The author has attempted to suggest some interpretations to these ends.

QUINCY WRIGHT

Charlottesville, Va.

February 1959

CONTENTS

I. THE ROLE OF THE UNITED NATIONS IN CONTEMPORARY INTERNATIONAL RELATIONS

1. <i>Condition of the World since World War II</i>	1
2. <i>Public Opinion concerning the United Nations</i>	2
3. <i>The Tasks of the United Nations</i>	5
4. <i>The United Nations as a Symbol</i>	8
5. <i>The United Nations as a Welfare Agency</i>	10
6. <i>The United Nations as a Political Agency</i>	13
7. <i>The United Nations and International Law</i>	16

II. INTERPRETATION AND APPLICATION OF THE CHARTER

1. <i>The United Nations and the Charter</i>	20
2. <i>Analysis of the Charter</i>	22
3. <i>Ambiguities of the Charter</i>	33
4. <i>Interpretation of the Charter</i>	35
5. <i>Planning and Co-ordinating Functions</i>	39
6. <i>Legal and Political Settlements</i>	43
7. <i>Universal and National Values</i>	45
8. <i>Standards of Interpretation</i>	47

III. DOMESTIC JURISDICTION AND THE COMPETENCE
OF UNITED NATIONS ORGANS

1. <i>The Geographical Distribution of Political Power</i>	50
2. <i>The Competence of United Nations Organs</i>	53
3. <i>Domestic Jurisdiction and the Charter</i>	56
4. <i>Domestic Jurisdiction and Intervention</i>	59
5. <i>Domestic Jurisdiction and International Law</i>	63
6. <i>The Maintenance of International Peace and Security</i>	69
7. <i>Human Rights and Social Welfare</i>	70
8. <i>Non Self-Governing Territories</i>	72
9. <i>Domestic Jurisdiction and Charter Review</i>	75

IV. THE PREVENTION OF AGGRESSION

1. <i>Persuasion and Coercion</i>	77
2. <i>Collective Security and the Balance of Power</i>	81
3. <i>The Importance of Defining Aggression</i>	82
4. <i>Efforts to Define Aggression</i>	85
5. <i>Debate on Aggression in the United Nations</i>	90
6. <i>Breach of the Peace</i>	93

CONTENTS	ix
7. <i>Threat to the Peace</i>	95
8. <i>Act of Aggression</i>	95
9. <i>Collective Security</i>	103
V. DEVELOPMENT OF THE UNITED NATIONS	
1. <i>Preparation for a Review Conference</i>	106
2. <i>Development of the United Nations in Practice</i>	113
3. <i>Proposals for Radical Revision of the Charter</i>	116
4. <i>Proposals for Moderate Revision of the Charter</i> <i>Disarmament and collective secu- rity; the veto and universality of membership; Assembly voting; international law; economic and social activities</i>	119
5. <i>Opportunities and Risks of a Review Conference</i>	129
6. <i>Conditions Necessary for a Successful Conference</i>	132
7. <i>Conclusion</i>	133

CHAPTER I

THE ROLE OF THE UNITED NATIONS IN CONTEMPORARY INTERNATIONAL RELATIONS

1. *Condition of the World since World War II*

THE tenth anniversary of the United Nations in 1955 was the occasion for many discussions of the organization both in the General Assembly and in the general public. The result of these discussions was indecisive. On the one hand there was a widespread recognition that the United Nations had performed useful services for mankind. On the other hand there was an equally extensive opinion that it had failed to meet the expectations of the people who hailed its foundation in the closing days of World War II.

Instead of a unity of the great powers to fulfil the purposes of the Charter the world was divided into two great blocs separated by an iron curtain of distrust and hostility. The instruments of destruction initiated by the explosions at Hiroshima and Nagasaki had increased in power with the invention of hydrogen fusion, the perfection of jet planes, and the prospect of intercontinental rockets and guided missiles, together with the knowledge that these weapons, possessed by governments on both sides of the polarized world, had precipitated an arms race of extraordinary economic costs and extreme political danger. The capacity for destruction had increased, but neither the nations nor the United Nations offered convincing evidence that that capacity would be responsibly controlled.

The hope of avoiding a war more devastating than any war of past history did not rest on confidence that the United Nations would function or that International Law would be respected, but on mutual fears. Prime Minister Sir Winston Churchill pointed out in the House of Commons, November 3, 1954: 'When everyone can destroy everyone, perhaps no

one will want to destroy anyone.¹ The deterrent power of mutual capacity for 'massive retaliation' and of courage to walk to the 'brink of war' failed, however, to create confidence in humanity's future.² However great may be the risks and however precise the threats of retaliation, a lurking fear remains that someone may miscalculate. A *fanatical* leader may assume the risk. An *unimaginative* leader may be unable to visualize the results of atomic war. A *resolute* leader may interpret the threat as a bluff or a *rash* leader may believe that his forces can destroy his victim's retaliatory power at the first assault. A *suspicious* leader may convince himself that his potential enemy is about to attack with atomic weapons and, assuming that war is inevitable, launch an attack to gain the advantage of the initiative. An *ambitious* leader, most dangerous of all, may miscalculate the risk and start or tolerate a 'nibbling aggression', which, developing into a small war may, with increasing losses, induce a determined general, convinced that there is 'no substitute for victory', to bomb more distant bases in order 'to break the stalemate' until world war emerges utilizing every weapon of mutual destruction. An equilibrium of hydrogen bombs and intercontinental rockets, in a world riven by mistrust, anxiety, ambition, and convictions that coexistence of rival ideologies is impossible, can hardly create the degree of security essential for human progress or for the tranquil enjoyment of life.

2. *Public Opinion concerning the United Nations*

In the minds of some, this state of the world registered failure of the United Nations. Some extremists even urged the dissolution of that organization or the withdrawal of their own countries from it.³ The number with this opinion was,

¹ *Parliamentary Debates*, House of Commons, 1954, vol. 520, col. 30.

² Secretary of State John Foster Dulles, 'Policy for Security and Peace', *Foreign Affairs*, April, 1954, vol. 32, pp. 353 ff.; James Shepley, 'How Dulles Averted War', *Life Magazine*, Jan. 13, 1956, pp. 70, 78.

³ Alexander Uhl, *The Assault on the United Nations*, Public Affairs Institute, Washington, D.C., 1953.

however, small. In the United States public opinion polls indicated that over two-thirds of the people regarded the United Nations as an important instrument and wished it continued or strengthened. Less than ten per cent wanted to abandon it, a somewhat larger number wished to supersede it by more effective world government and the remainder had no opinion.⁴

This overwhelming sentiment in favour of the United Nations appears to be shared in other countries and was certainly manifested in discussions in the tenth General Assembly of the United Nations. A certain optimism was evident in the addresses on the opening of this Assembly in September 1955, because of the apparent improvement in the political situation of the world resulting from the 'Summit Conference' recently ended at Geneva. 'The nations are becoming more and more sensitive to the moral verdicts of this organization', said Secretary of State John Foster Dulles. 'The perceptions and the moral judgements of the nations meeting here endow this assembly with genuine power. No nation lightly risks the Assembly's moral condemnation with all that that condemnation implies.'⁵

The entry of sixteen additional states into the United Nations during the 10th Assembly, and six more subsequently increasing the number of members to 82, indicates that the peoples and governments, though aware that the United Nations, no more than the balance of destructive weapons, is a guarantee of peace, look upon the United Nations as an agency of great importance. Non-member states consider it important to become members, and the members consider it important that the United Nations become universal.

It seems probable that some of the discontent with the United Nations, arose from misapprehensions in 1945. The people, emerging from war, overestimated their own

⁴ Elmo Roper, *American Attitude Toward World Organization*, 1955. See also *The United States Public and the United Nations*, Carnegie Endowment for International Peace, New York, 1958, p. 9.

⁵ *United Nations Review*, Nov. 1955, vol. 2, p. 4.

willingness to submerge aspects of sovereignty by giving a world organization capacity to enforce international law, not only against other states but against themselves. Both peoples and governments should perhaps have been more aware of the intensity of the sentiment of national sovereignty, and the differences in concepts of the good world and the nature of man, which, in the present as in the past, have baffled the ingenuity of searchers for permanent peace.

It has been said: 'all men are brothers, but all sovereign nations are enemies.'⁶ Men are brothers because they cannot fail to recognize their similarity in capacities and desires and their dependence on one another. The joy and suffering of one tends to reproduce itself by sympathy in whoever observes. No one can live to himself alone, especially in a world economy, expanding through division of labour, and in a world culture progressing through exchanges of persons, ideas, and techniques. Thus sympathy and interest make man a social animal. While each has instincts of dominance and acquisitiveness, which often drive him into conflict with his neighbours, while most have prejudices of race, nationality or class inducing enmity to the alien, the sentiments and interests urging co-operation have prevailed and, as means of transport and communication have developed, men have associated in larger and larger groups to co-operate for common ends.

Sovereign states, on the other hand, are enemies, because governments cannot fail to recognize their disparities in power and policies, and to emphasize the relative independence and self-sufficiency of each. Vattel pointed out in the middle of the eighteenth century:

Individuals are so constituted that they could accomplish but little by themselves and could scarcely get on without the assistance of civil society and its laws. But as soon as a sufficient number have united under a government, they are able to provide for most of their needs, and

⁶ Frederick L. Schuman, *International Politics*, 4th ed., New York, McGraw Hill, 1948, p. vii.

they find the help of other political societies not so necessary to them as the state itself is to individuals.⁷

Yet, as indeed Vattel recognized, the distinctiveness and the self-sufficiency of states is relative. All are alike in being composed of human beings and, with the progress of invention, the interdependence and vulnerability of all develop at an accelerating pace. But on the whole the sentiment of nationality and the interest in sovereignty have prevailed, and states have remained actual or potential enemies. 'I have long thought' wrote Lord Shelburne to Jeremy Bentham in 1789, 'that the people have but one cause throughout the world. It is sovereigns who have different interests . . . If the people of different countries could once understand each other, and be brought to adopt a half-a-dozen general principles, their servants would not venture to play such tricks.'⁸

The triumph of the cause of democracy and human rights in World War II tended to exaggerate the sentiment of human solidarity among the victorious allies, but it was inevitable that the relaxation of necessities, resulting from the defeat of the common enemy, should demonstrate that the natural enmity of states had still to be reckoned with.

3. *The Tasks of the United Nations*

The United Nations cannot evade the problem, if its second decade is to be more successful than its first, of realizing in greater degree the brotherhood and solidarity of man and of ameliorating the enmity of states. It is the task of the United Nations, on the one hand, to develop the concept of world citizenship in the minds of men everywhere, not in conflict with national citizenship but in preservation of that citizenship,

⁷ Emmerich Vattel, *The Law of Nations or the Principles of Natural Law applied to the Conduct and to the Affairs of Nations and of Sovereigns*, (1758) Carnegie Edition, 1916, Preface, pp. 9a-10a.

⁸ *Works of Jeremy Bentham* (Bowring ed.), Edinburgh, 1843, vol. 10, pp. 197-8 cited by Gerald Stourzh, *Benjamin Franklin and American Foreign Policy*, University of Chicago Press, 1954, p. 217.

and, on the other hand, to develop means for the pacific settlement of disputes between nations and the prevention of aggression by one against another. These two objectives supplement one another. Unless many individuals in our shrinking world realize as did Francisco de Victoria and Francisco Suarez more than three centuries ago,⁹ that mankind as a whole constitutes a community maintaining, developing and giving legal sanction to standards of international relations, each nation, lacking standards higher than itself, will be a wolf to the others, and international law, in so far as it exists at all, can be only an uncertain guide to expediency. Decisions can only be based on political interests and capabilities, and international law can serve only the function of enlightening national interest by general experience.

If, however, the human population conceives of itself as a universal community with generally recognized standards of value and procedure, then, even in the absence of effective means of enforcement, international law will have behind it the sanction of public opinion. In such circumstances, states, appreciating the value of a good reputation, will be inclined to observe the law supported by that opinion. Only if an immediate and vital interest is involved, will political expediency tend to overrule legal obligation. Furthermore, a sense of world community among people will induce governments to pursue policies of balancing power, of collective self-defence, or of collective security which exert a positive deterrence to law breaking even by governments pressed by immediate national interests. While policies of balancing power, of collective self-defence, and of collective security differ from one another in important respects, each, if widely accepted, functions to deter aggression and to stabilize the society of nations.

⁹ Franciscus de Victoria, *De Indis et de jure belli*, relectiones (1532) Carnegie edition, 1917, sec. III, p. 151; Francisco Suarez, *De Legibus, ac deo legislatore* (1912), Carnegie edition, 1944, Book II, chap. xix, sec. 9, pp. 348-9. See also Vattel, *op. cit.*, Preface, p. 9a; Introduction, secs. 10, 11, p. 5; James Brown Scott, *Francisco de Victoria and his Law of Nations*, Oxford, Clarendon Press, 1934, p. 138; 'The Individual, the State, the International Community', *Proceedings, American Society of International Law*, 1930, p. 1 ff.

A widespread sense of world community among the people of the world is essential for an effective international law, but the average man finds it difficult to conceive of the human race as a community. There are no opposing and hostile communities, so important in the case of the national state, to stimulate a sense of solidarity. Universal institutions, symbolizing the unity of mankind, have not become sanctified by tradition. The services offered by international agencies are for most people less important than those offered by their own states. Furthermore the governments find it difficult to abide by standards of the world community unless impartial procedures exist and function effectively, to establish the facts in international controversies, to ascertain the standards applicable to their settlement, to focus public opinion against the law-breaker, and to co-ordinate common action to prevent or stop aggression.

Thus suitable international institutions and a widespread sentiment of world citizenship are each essential to the other, and both are essential to an effective international law and to a peaceful and prosperous world. What is the role of the United Nations in meeting these needs?

The United Nations is intended to influence the attitudes, opinions and practices of peoples by serving as a symbol of world unity and as an agency of human welfare. It is also intended to maintain international peace and security. In the latter role it seeks to co-ordinate action to prevent aggression, to settle international controversies, to promote disarmament, to develop international law, and to modify unjust conditions peacefully. If the United Nations is to perform these functions successfully, modifications in traditional conceptions of international law are undoubtedly required. The United Nations is not, and was not intended to be, a world government. It is based on the principle of the sovereign equality of states, but the scope of sovereignty has been so modified by obligations undertaken by the members in ratifying the Charter that the principles of that instrument can be called a 'new international law'.

Subsequent Chapters deal with these new concepts, especially as they bear on Charter interpretation, on

domestic jurisdiction, on war, and on the progressive development of international law and organization.

This Chapter deals with the actions which the United Nations has taken or failed to take in its intended roles to date.

4. *The United Nations as a Symbol*

As a symbol of world unity the United Nations has progressed during its first decade. The importance of this role of the United Nations should not be underestimated. Man, differing from the animals, lives in a world of symbols. Symbols establish his identifications, his loyalties, and his goals. Only when primitive instincts and desires have become generalized by symbolization can they become persistent values guiding individual or group action.

To most people the idea of the world community seems intangible and remote. Unless this idea is symbolized by tangible objects and institutions, continually attracting attention, men will not be able to believe in its existence, to be aware of their relation to it, or to identify themselves with it. The United Nations with its buildings, flag, personnel, and activities can be such a symbol.

As already noted, opinion polls indicate that the overwhelming opinion of mankind looks upon the United Nations as the main hope of peace, in the long run, however much the governments may have found it necessary to rely on national armaments and regional arrangements to face immediate threats. Proposals to eliminate the Communist group of states from the United Nations, occasionally suggested by statesmen, have had no substantial support. Instead there have been repeated assertions of the value of the United Nations as the only bridge between the democratic and the communist states, also as an important bridge between the colonial and anti-colonial states. As a symbol, uniting the world in spite of these only too obvious political chasms, the United Nations presents an opportunity for the present and a hope for the future.

The membership of the United Nations has increased from fifty-one in 1945 to eighty-two in 1959. The action of the Tenth General Assembly in breaking the five-year deadlock by the admission of sixteen new members was greeted as a triumph of diplomacy, though there was regret that some states still remained outside. The new members did not greatly change the political complexion of the General Assembly as respects the influence of communism and free democracy but they increased the influence of Europe as compared with that of America, and of Asia and Africa as compared to both. The American states no longer constituted more than a third of that body, capable, if united, of vetoing resolutions but the Asian-African group did. The states still not members include Mongolia, which has few international contacts; Switzerland, which because of its traditional neutrality has not applied for membership, and three states, still divided by the cold war line, Germany, Korea, and Viet Nam. The latter states present the most serious political problem, similar in fact, though not in law, to that of China. The latter though a member of the United Nations is represented by the 'national' government which controls only the island of Formosa with a population of some ten million, thus excluding over six hundred million mainland Chinese from effective representation. This problem is similar to that of the still divided countries, though the solution may be different. Formosa may be recognized as a new state and the Communist government may be generally recognized as the government of China, whereas in the other cases, eventual union of the two halves is the generally accepted but not inevitable goal.

The General Assembly, as the major agency of United Nations political action and as a forum of genuine debate, distasteful as the tone of that debate has been at times to some states, has kept the United Nations before the attention of the world's public and has attracted a favourable opinion, particularly among the states of Asia, Africa, and Latin America, whose people look upon it as an aid in national self-determination and in advancement of living standards and human rights.

5. *The United Nations as a Welfare Agency*

The success of the United Nations and the Specialized Agencies in contributing services in such fields as education, communication, transportation, health, social justice, economic progress, human rights, and the development of backward areas greatly affects its significance as a symbol of world unity. People tend to regard an agency which benefits them as important, valuable and deserving their loyalty. The services of this kind which the United Nations has undertaken through the General Assembly, the Economic and Social Council, the Trusteeship Council, the Secretariat, and the Specialized Agencies have varied in effectiveness, and in their impact on the people of different sections of the world. These services have on the whole benefited the less developed parts of the world to the greatest extent. In Western Europe and North America, the United Nations is thought of primarily as a political agency to maintain peace and settle international controversies, but in Asia, Africa, and to some extent in Latin America, its activities in the field of technical aid, health, and child welfare attract great attention. The more wealthy states have less need of this type of service and sometimes object to projects which will primarily benefit the less wealthy states but which will increase the United Nations budget and consequently the annual contributions of these states. The lack of enthusiasm by the United States for SUNFED (Special United Nations Fund for Economic Development) is a case in point.

Furthermore, the states that have to foot most of the bill tend to emphasize the political effects of programmes of this type. They usually expect more political and psychological benefit if they give foreign assistance directly rather than through the United Nations. Governments also anticipate political advantage at home if they assume full responsibility for all government welfare work among their own people. They hope that knowledge of the donor will make that donor popular. This aspect of the matter has doubtless influenced the position of both the United States and the Soviet Union toward United Nations welfare work. In the

United States, congressional debates on both national and United Nations technical and economic assistance appropriations tend to emphasize the political advantages for the United States in the cold war. Congressmen in voting appropriations for foreign aid may be influenced by humanitarian considerations and by the hope to develop foreign markets for the United States, but they appear to be more influenced by the anticipated value of the aid in keeping uncommitted countries out of the Soviet bloc, or in persuading them to come into the American bloc. It appears, however, that a direct linkage of foreign assistance to political advantage tends to be self-defeating. Underdeveloped areas have sometimes refused assistance from the United States which they interpreted as an effort to influence their foreign or domestic policy. For this reason, they have preferred assistance from the United Nations.

Finally states may object to the development of United Nations Welfare Services from fear that it will subtly gnaw into their sovereignty. In proportion as welfare services are effective in influencing the sentiments and loyalties of the beneficiary, the United Nations, in so far as it performs such services, tends to become a powerful political symbol and the relative influence of national states as political symbols is decreased. Consequently, in so far as states engage in welfare work to build political power and prestige both at home and abroad, they will hesitate to contribute to such work if they think it will build the political power and prestige not of themselves but of the United Nations. In proportion as the United Nations exerts influence it is inevitable that it should be regarded as a political rival of sovereign states.

But services of the United Nations may not only compete with services of sovereign states, they may also limit the states' autonomy. Activity by the United Nations and the Specialized Agencies to protect human rights, to punish genocide, and other international crimes, to regulate air navigation, radio wavelengths, postal services, narcotics trade, and customs tariffs and to maintain standards of education, labour legislation, public health, statistical

surveys, and land tenure involve obligations upon the states whose people benefit by these services, and these obligations limit the government's freedom in the exercise of national sovereignty. In the United States this aspect of United Nations activities led to the movement initiated by Senator Bricker of Ohio to amend the Federal Constitution so as to qualify the treaty-making power and to eliminate the self-executing character of treaties. Fear that covenants of human rights and the genocide convention might impair the rights of the states, reserved by the federal constitution, and might qualify the domestic jurisdiction of the nation, seems to have dominated this movement. The executive repeatedly pointed out that the Bricker proposal would seriously impair the capacity of the United States to make many essential types of treaties such as commercial treaties, reciprocally guaranteeing rights of residence to merchants, and would make it difficult for the United States to fulfil its treaty obligations, a difficulty which was so serious in the period of the Articles of Confederation, that the Constitutional provision which the Bricker proposal would repeal, assuring the supremacy of treaties over state laws, was adopted. The traditional caution of the Senate in approving the ratification of treaties, a function which requires a two-thirds vote in that body, suggested that the anxieties of Senator Bricker and his supporters were exaggerated¹⁰, and by 1959 Senator Bricker had been defeated in the elections and the movement had declined in importance.

While the political activity of the United Nations may arouse protests from nationalists because it is thought to qualify national sovereignty, the long-run influence of the social and economic activities of the United Nations and the Specialized Agencies upon national sovereignty, as the rise of the Bricker movement suggested, may be even greater.

¹⁰ Quincy Wright, 'Congress and the Treaty Making Power', *Proceedings, American Society of International Law*, April, 1952, pp. 43 ff.; Hearings before a Sub-committee of the Committee on the Judiciary, *Treaties and Executive Agreements*, United States Senate, 83rd Congress, 1st Session, 1953, pp. 676 ff., 84th Congress, 1st Session, 1955, pp. 64 ff.

For this reason activities of the United Nations agencies in this field have consisted mainly in collecting information, making studies and giving advice. The agencies have scrupulously avoided actions that could be construed as encroachments on the sovereignty of nations. Limitations upon national freedom of action arise only from concrete obligations undertaken by the terms of the Charter or by supplementary treaties binding only states that ratify. This type of international work proceeds, therefore, not by authority but by voluntary co-operation. Yet, in so far as such co-operation is effective and influences the attitude and opinions of mankind, the political authority of the United Nations is increased and states are under pressure to ratify treaties and thus to modify the free exercise of their sovereignty.

6. *The United Nations as a Political Agency*

In the political field the United Nations was intended, in contrast to the League of Nations, to act with authority rather than merely to co-ordinate action by the Nations. The Security Council was given wide powers to determine and suppress aggression, to deal with disputes threatening the peace, and to utilize economic and military force to carry out its decisions. These decisions, if within the scope of the Charter, were made legally binding on all the members.¹¹

This system, however, suffered from two serious procedural limitations. Security Council decisions required concurrence of the five great powers and military forces would only be available to the Security Council on the basis of special agreements between that organ and the respective states. The cold war has prevented the conclusion of any such agreements. It has also prevented the making of any binding decisions with the possible exception of certain resolutions in the Indonesian and Korean cases. Even in the Korean episode, when the Security Council was able to function for a time because of the voluntary absence of the Soviet Union,

¹¹ U. N. Charter, arts. 25, 48.

the military action rested on voluntary acceptance by states of recommendations made by the Security Council.

Because of these limitations on its political activity, the United Nations has had to utilize methods similar to those employed by the League of Nations, but with the disadvantage that the members have assumed less definite and positive obligations under the Charter directly than they did under the League of Nations Covenant. In both cases the members accept negative obligations not to resort to aggressive hostilities.¹² Under the Covenant, the members also undertook positive obligations to 'preserve as against external aggression the territorial integrity and existing political independence of all the members' and to sever all economic relations with a member that 'resorted to war in disregard of its covenants'.¹³ There are no parallel positive obligations in the Charter except those already referred to requiring members to carry out decisions of the Security Council and the principle requiring members to assist the United Nations in 'actions' which it takes in accordance with the Charter.¹⁴ Since the United Nations cannot take 'action' except through a Security Council decision, the latter obligation adds nothing to the former.

The United Nations, therefore, in its political work has had to rely upon the moral influence of recommendations of the Security Council and of the General Assembly. Since the latter is not hampered by a veto and is competent to act on political matters after the Security Council has failed to function,¹⁵ it has been utilized to an increasing extent. Furthermore the General Assembly is a more effective agent for the expression of world public opinion than is the Security Council.

These procedures have contributed to stopping hostilities in Indonesia, Palestine, Kashmir, Greece, and Egypt, to preventing successful aggression in Korea, and to settling disputes in Iran, Syria, and elsewhere. In Palestine, Trieste, Libya and Italian Somaliland, because of special treaties,

¹² *Ibid.*, art. 2, par. 4, arts. 12, 16.

¹³ League of Nations Covenant, arts. 10, 16.

¹⁴ U. N. Charter, art. 2, par. 5. ¹⁵ *Ibid.*, arts. 10, 11, 12, 14.

the United Nations was able to act in an authoritative manner.

The successes of the United Nations have not however given sufficient sense of security to the major states to make disarmament possible, or to make regional defence arrangements unnecessary. The states continue to rely upon their own arms and alliances for political security, with the result that arms races and the bi-polarizing tendency of such alliances has prevented the development of confidence, stability and genuine peace.

Collective security, which implies action under authority of the world community as a whole to prevent or stop the use of armed force in violation of the obligations of a state under international law, has been largely superseded in practice by collective self-defence arrangements. Such arrangements are permitted by the Charter but action under them is legitimate only if collective security fails.¹⁶ Since the functioning of collective security has become a poor prospect because of the veto and the lack of agreements for United Nations forces, collective self-defence arrangements have been relied upon. They rest upon treaties by which each party agrees that an attack upon one will be treated as an attack upon all. Such agreements have provided for organizations such as NATO, SEATO, the Baghdad Pact, the Organization of American States, the Arab League and the Warsaw Organization. These organizations are not manifestations of collective security, though sometimes given that name, especially in the United States, but of traditional alliances. They do not operate under authority of the world community as a whole but under their own authority. While in some cases, notably the Organization of American States, they may operate upon their members, their primary purpose is to operate upon non-members. They do not manifest a jural whole enforcing law upon its members, but an alliance acting against another alliance. Security upon this basis does not promote a law-governed world but a political balance of power.¹⁷

¹⁶ *Ibid.*, art. 51.

¹⁷ *Regional Arrangements for Security and the United Nations*, 8th Report,

7. *The United Nations and International Law*

It is not surprising therefore, that the efforts of the United Nations to develop international law, and the judicial settlement of disputes has lagged. The International Law Commission has produced some draft codes, but its effort to define aggression and offences against peace and security have not produced practical results. Its drafts dealing with the law of the sea, statelessness and arbitral procedure are peripheral to the problem of peace and security. Its draft concerning the rights and duties of states has produced as much controversy as concurrence. Its studies have not yet produced a draft of the law of treaties. Obviously the new international law of the Charter, which seeks to deal with the major political problems of the world, is not sufficiently stabilized readily to lend itself to the methods of jural analysis characteristic of the International Law Commission.¹⁸

The International Court of Justice has been less frequently utilized than was its predecessor in the League of Nations period, the Permanent Court of International Justice. The organs of the United Nations have seldom asked for advisory opinions on matters affecting their own competence, and states seldom submit for decision disputes of political importance. Accessions to the optional clause of the court statute have been less numerous, in proportion to the number of states, parties to the Statute, than was true in the League of Nations period.¹⁹

The apparent dominance of politics over law in contemporary international relations stems from the excessively disturbed condition of the world consequent upon the devastation of World War II, upon the unsettled political issues

Commission to Study the Organization of Peace, New York, 1953. Charles E. Martin, *Universalism and Regionalism in International Law and Organisation*, Inter American Academy of International Law, Monographs vol. 7, Havana, Cuba, 1959, pp. 370-590.

¹⁸ Hersch Lauterpacht, 'The Codification and Development of International Law', *American Journal of International Law*, Jan. 1955, vol. 49, pp. 16 ff.

¹⁹ Shabtai Rosenne, 'The International Court and the United Nations', *International Organization*, May 1955, vol. 9, pp. 244 ff.

of that war, upon the major political differences between colonial and anti-colonial states, upon the uncertainty arising from new weapons of destruction, and especially upon the vigorous ideological split between democratic and communist states.²⁰

Whatever may be the causes, the political *status quo* of 1959 undoubtedly involves widespread dissatisfaction. Germany, Korea and Viet Nam each wishes to be reunited and neither of the rival governments of China is satisfied. France, Germany, Italy and Japan are unsatisfied with their existing political position in the world. Britain, France, the Netherlands, Belgium and Portugal wish to retain their imperial dependencies or at least to decide themselves on changes in the status of these territories, while the Asian and African peoples, supported by the newly independent states represented at the Bandung Conference (1955) wish independence or the opportunity to determine their own status. The Soviet Union wishes to expand the area of Communism, while the United States and its allies wish to restore satellite states to independence and to expand the area of democracy. All states feel insecure in the presence of increasing stock-piles of hydrogen bombs, jet planes, and guided missiles, but nevertheless they resist, as encroachments on sovereignty, forms of inspection that would make mutual disarmament possible.

The conflicts of political demands are so great, and so accentuated by ideological differences, that proposals or methods of peaceful change that might establish a situation capable of being stabilized under law are difficult to devise. The situation has some resemblance to that of the seventeenth century. The ideological division between Catholics and Protestants in Europe prevented the establishment of any *status quo* which would be generally acceptable until thirty years of devastating war demonstrated to all the inconclusiveness and the destructiveness of ideological war.

²⁰ George A. Lipsky, editor, *Law and Politics in the World Community*, University of California Press, Berkeley, 1953, pp. 3 ff.

The principle *cuius regio eius religio*, subordinating religious controversy to territorial sovereignty, accepted at the Peace of Westphalia, provided the basis for international politics and international law for three centuries.²¹ While the dynamic world of today can not expect a rigid *status quo* which can be maintained by jural institutions, it can hope for a more generally satisfactory situation which might be maintained through orderly procedure of peaceful change, pacific settlement, and law maintenance.

That hope, however, may be long deferred. International relations are likely to be predominantly political for some time. The peace depends now, as always, on a suitable balancing of politics by law, a balance which is possible only if some standards and principles of international morality, of civilization, of public philosophy, or of natural law are accepted by all states, whatever their differences in ideology

²¹ Quincy Wright, 'International Law and Ideologies', *American Journal International Law*, October 1954, vol. 48, pp. 616 ff. According to Paul Guggenheim, 'Positive international law, is therefore by necessity secularized, religiously neutral law, in view of the manifold religious and ethical legal communities which constitute the society of nations. All attempts to dissolve its secular character and to replace it with a legal order conforming to a *fixed* religious ideal are therefore directed against the stability of the valid and effective international legal order.' In Lipsky, *op. cit.* p. 30. To similar effect F. S. C. Northrop, after analyzing the ideological differences of nations and their possible synthesis philosophically, writes: 'This common, single world ideology is not yet, it is merely beginning to be in the making. This is why for the present and the immediate future both international law and the foreign policy of any nation must be grounded in the living law fact of living law pluralism.' *The Taming of the Nations*, New York, Macmillan, 1952, p. 308. The principle that territorial sovereignty dominates ideology is still recognized formally by the major governments, in spite of the vigour of their ideological propaganda. President Eisenhower said in an address of April 19, 1953: 'Any nation's right to a form of government and an economic system of its own choosing is *inalienable*. Any nation's attempt to dictate to other nations their form of government is *indefensible*.' (Dept. of State, Bulletin, vol. 28, April 27, 1953, p. 599.) To the same effect Prime Minister Bulganin wrote in a note of Feb. 1, 1956 to President Eisenhower: 'The Soviet Union has always maintained, and maintains at the present time the principle that the internal system in any state is the domestic concern of its own people. We expect that other powers will also be guided by it in their international relations.'

or in power.²² It is worthwhile, therefore, to examine the principles of the Charter and the law which is emerging from interpretation and application of those principles. Such an examination, disclosing the structure of law to which states have agreed, may guide jurists and administrators in applying the Charter, and political scientists in considering whether the principles of the Charter are adequate to the conditions of the world.

²² Walter Lippmann, *Essay in the Public Philosophy*, Boston, Little Brown, 1955; George Schwarzenberger, 'The Standard of Civilization in International Law', *Current Legal Problems*, (London) 1955; Hersch Lauterpacht, *International Law and Human Rights*, London, Stevens, 1940, pp. 73 ff.; *Ibid.*, *Private Law Sources and Analogies of International Law*, London, 1927; Quincy Wright, 'Legal Positivism and the Nuremberg Judgement', *American Journal of International Law*, April 1948, vol. 42, pp. 405 ff.; *Ibid.*, *The Study of International Relations*, New York, Appleton-Century-Crofts, 1955, pp. 225 ff., 485 ff; Arthur N. Halcombe, ed., *Organizing Peace in the Nuclear Age*, Eleventh Report, Commission to Study the Organization of Peace, New York, 1959.

CHAPTER II

INTERPRETATION AND APPLICATION OF THE CHARTER¹

1. *The United Nations and the Charter*

IN its present form the United Nations is based on the Charter but it is something more than the Charter. The Charter is a document. The United Nations is an institution composed not only of public agencies and policies, but also of the private opinions and attitudes which give them vitality. To understand it one must study not only the Charter but the procedures, discussions, recommendations and decisions of the assemblies, conferences, councils, committees, commissions, and secretariats which function in its name in New York, Geneva and other cities. One must also study the policies, activities and decisions of the delegations and governments of the 82 member states intended to influence and implement the recommendations and decisions of these agencies. Furthermore, the opinions, activities and resolutions of numerous non-governmental organizations, both national and international, must be considered because they influence the policies of the international agencies and the national governments. Finally, to understand the United Nations now and its possibilities of future development, it is especially important to study the attitudes and beliefs of the men and women of the world about it, about its activities, and about the relations of their respective nations to it. The United Nations lives not only in the *United* action of its 'organs' and 'specialized agencies', but also in the policies

¹ In the preparation of this chapter the author utilized material prepared for the Commission to Study the Organization of Peace (1955), and for the Kelsen lectures at the University of California (1952). See Commission to Study the Organization of Peace, Ninth Report, Charter Review Conference, New York, Aug. 1955, p. 14 ff; Quincy Wright, *Problems of Stability and Progress in International Relations*, University of California Press, Berkeley, 1954, p. 26 ff.

of the *Nations* which are united, and in the attitudes of the *Peoples* whose 'determination' and 'resolution' according to the preamble of the Charter brought it into existence. Only in so far as these attitudes and policies are favourable will the organs and agencies continue to live. In this the United Nations does not differ from other social institutions. All social institutions must live not only in collective organs and agencies but also in individual minds and hearts if they are to survive.

Charters, constitutions and other documents can contribute to the establishment, functioning and growth of institutions but they can never define them completely, much less predict their future development or activities. John Marshall, the distinguished Chief Justice of the United States Supreme Court, pointed out in 1819 with reference to the Constitution :

A constitution to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects deduced from the nature of the objects themselves.²

The United States has grown up in ways unforeseen either by the Constitution framed in 1787 or by its 22 formal amendments. England has existed as a continuous institution since 1066 with no written constitution at all. The United Nations was established by a brief declaration on January 1, 1942 and functioned as an institution, not only to win the war but also to organize the peace, and to establish a number of specialized international agencies before its Charter was adopted in 1945.

It has been suggested that Members of the United Nations, established by the Declaration of 1942, might again summon

² Marshall, C. J., *McCulloch vs. Maryland*, 1819, 4 Wheaton 316. See also note 33 below.

a conference, as they did at San Francisco in 1945, and accept a new Charter by procedures other than those specified in the present Charter.³ It is interesting to recall that the Congress of the United States called the Federal Convention of 1787 and established the Constitution by procedures different from those prescribed by the Articles of Confederation.⁴ It has also been suggested, though not generally accepted, that the articles of the Charter concerning amendments may be amended by procedures other than those which they themselves prescribe.⁵

Although the Charter is not the United Nations, it is at present its fundamental document. It gives form and stability to the organs, emphasizes general goals, and by its principles and procedures maintains a balance among universal, regional, and national authorities, and between the powers of public agencies and the rights of persons and nations. It conforms to Chief Justice Marshall's concept of a constitution. It marks 'great outlines', designates 'objects' and leaves wide opportunities to deduce 'minor ingredients' from 'the nature of the objects themselves'. The Charter influences but does not strait-jacket the future. Careful scrutiny of its provisions has permitted, and will continue to permit, new organs and new procedures to develop as experience suggests and exigencies demand, without violating its prescriptions. With this understanding of the role of the Charter in the life of the United Nations let us consider that instrument.

2. *Analysis of the Charter*

The provisions of the Charter fall into five classes dealing respectively and successively with *purposes, principles, members,*

³ Jose Arce of Argentina, former President of the General Assembly in *The United Nations*, Madrid, 1952, pp. 61-2.

⁴ The Articles required ratification by 'the legislatures of every state' (Art. 13) while the Federal Convention provided that the Constitution should be established upon 'ratification of the Conventions of nine states' between the states so ratifying (Art. 7).

⁵ Professor Hans Kelsen, International Law Association, Edinburgh Conference, 1954, p. 12 ff.

organs, and *procedures*. The first four of these matters are dealt with in the preamble and chapters one, two and three. The remaining sixteen chapters deal largely with procedures. Six chapters describe the procedures available to each of the principal organs along with details of their structure and powers,⁶ and ten describe procedures for accomplishing major purposes of the United Nations.⁷

The Soviet Union has declared that the unanimity of the great powers is the 'fundamental principle' of the Charter but scrutiny of the text and of the history of that instrument suggests that this unanimity is merely a procedure of limited applicability. The concurrence of all the permanent members is required explicitly only for non-procedural 'decisions' of the Security Council⁸ and amendments of the Charter.⁹ The line between procedural and non-procedural matters is not defined and it is not clear from the text whether 'recommendations' on such matters as pacific settlement of disputes,¹⁰ admission of new members,¹¹ and appointment of a Secretary-General¹² are to be regarded as 'decisions', although practice has, up to date, so regarded them. The provisions concerning the unanimity of the great powers is not included among the 'principles' of the Charter, the organs other than the Security Council are not affected by them, and the members have by overwhelming majorities sustained the use of alternative methods, permitted by the Charter and not involving the great power veto, when the Security Council veto stood in the way of achieving the purposes and maintaining the principles set forth in the Charter.¹³ Judging by the activity of its organs, the policies

⁶ IV (General Assembly), V (Security Council), X (Economic and Social Council), XIII (Trusteeship Council), XIV (International Court of Justice), and XV (Secretariat).

⁷ VI (Pacific Settlement of Disputes), VII (Action with respect to Aggression), VIII (Regional Arrangements), IX (International Economic and Social Co-operation), XI (Non-Self-Governing Territories), XII (Trusteeship System), XVI (Treaties and Immunities), XVII (Transitional Arrangements), XVIII (Amendments), XIX (Ratification and Signature).

⁸ Art. 27 (3). ⁹ Art. 108. ¹⁰ Arts. 36, 37, 38. ¹¹ Art. 4 (2).
¹² Art. 97. ¹³ Uniting for Peace Resolution, November 3, 1950.

of most of its members, and the attitudes of most of its peoples, the provisions concerning purposes and principles are more fundamental and persistent aspects of the Charter than those concerning organs and procedures.

The same conclusion can be drawn from the history of the Charter. Secretary of State Stettinius, chairman of the United States delegation at the San Francisco Conference, said of the Charter in his official report to the President :

Its outstanding characteristic and the key to its construction is its dual quality as declaration and as constitution. As declaration it constitutes a binding agreement by the signatory nations to work together for peaceful ends and to adhere to certain standards of international morality. As constitution it creates four over-all instruments by which these ends may be achieved in practice and these standards actually maintained.

He then states the commitments of the members by the ' declaration ' mainly found in the first chapter and says :

The Charter in its capacity as constitution creates, in addition to its Secretariat and the Trusteeship Council with its specialized but vital functions, four principal over-all instruments to arm its purposes and to accomplish its ends: an enforcement agency; a forum for discussion and debate; a social and economic institute through which the learning and the knowledge of the world may be brought to bear upon its common problems; and an international court in which justiciable cases may be heard.¹⁴

It is to be noticed that this description of the functions respectively of the Security Council, the General Assembly, the Economic and Social Council and the International Court of Justice does not accurately conform to the functions

¹⁴ Charter of the United Nations, Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State, June 26, 1945, pp. 12, 13.

they are actually performing today. The purposes and principles have remained the same but the functions and procedures of the organs have changed.

The fundamental character of the purposes and principles of the Charter can best be indicated by reciting them. The 'purposes' include: (i) the 'saving of future generations from the scourge of war' by 'practising tolerance' and 'uniting strength to maintain international peace and security'; (ii) the 'reaffirmation of faith in the dignity and worth of the human person' by 'promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'; (iii) the 'reaffirmation of faith in the general rights of nations, large and small' by 'respecting the equal rights and self-determination of peoples'; (iv) 'the establishment of conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'; and (v) 'the promotion of social progress and better standards of life in larger freedom' by 'employing international machinery for the promotion of the economic and social advancement of all peoples.'¹⁵ Purposes are also stated in later articles of the Charter¹⁶ but they appear to be consistent with and subordinate to these major purposes which may be designated as *peace, human rights, self-determination of nations, international justice, and social progress*. 'We the peoples of the United Nations' expressed in the Charter our 'determination' to accomplish these purposes.

The 'principles' of the Charter assert: (1) the *right of members* to 'sovereign equality', and independence from United Nations 'intervention' in matters of 'domestic jurisdiction'; (2) the *duty of members* to 'fulfil in good faith the obligations assumed by them in accordance with the Charter', to settle international disputes 'by peaceful means', to 'refrain in their international relations from the threat or use of force' except as permitted by the Charter, 'to give the United Nations every assistance in any action it takes in accordance with' the Charter, and 'to refrain

¹⁵ Preamble and Art. 1. ¹⁶ See Arts. 13, 26, 55, 73, 76.

from giving assistance to any state against which the United Nations is taking preventive or enforcement action'; and (3) the *duty of the United Nations* to respect the rights of its members and to ensure that non-members 'act in accordance with these principles so far as may be necessary for the maintenance of international peace and security'.¹⁷ Other principles are stated in later articles of the Charter¹⁸ but these appear to be intended either as subordinate to, or explanatory of, the general principles of *sovereignty*, *good faith*, *peaceful settlement*, *non-aggression* and *collective security* applicable to both members and non-members. The Charter states that 'the organization and its members, in pursuit of the Purposes' shall act in accordance with these principles. The 'principles' seem, therefore, to have been considered second only to the 'purposes' in importance and permanence.

The provisions of the Charter concerning membership¹⁹ have been controversial. When the permanent organization of the United Nations was being considered during the war many believed that this organization should, in principle, be universal. Thus in 1943 a group of American jurists, educators, and statesmen, under the leadership of Judge Manley O. Hudson published a statement on 'The International Law of the Future' which proposed that 'the community of states should be organized on a universal basis. All states which exist or which may come into existence in the future should be included. No provision should be made for the expulsion or withdrawal of any state.'²⁰ It was argued that the purpose of preventing war and maintaining law could not be achieved unless every state was subject to the obligations and control of the United Nations. This point of view was vigorously urged by some states at San Francisco and was accepted as an ideal goal by most of the others.²¹ Universality of Membership was also urged in

¹⁷ Art. 2. ¹⁸ See Arts. 25, 51, 55, 56, 73, 74, 80, 94, 102, 103, 104, 105. ¹⁹ Arts. 3-6. ²⁰ International Conciliation, April 1944, p. 270.

²¹ The Committee at San Francisco dealing with the matter reported to Commission I; 'Uruguay thought all communities should be members of the Organization and that their participation is obligatory. Other delegations believed that universality in this sense was an ideal toward which it was proper to aim, but to which it was not necessary

the Twenty Year Programme for Peace presented by the Secretary-General in June 1950 as a result of extensive consultations with the major governments. This programme was commended by the Fifth Session of the General Assembly and referred for study to the relevant agencies of the United Nations by a vote which was unanimous except for the Soviet Bloc.²²

Others wished the United Nations to be confined to states who could be relied upon to maintain its purposes. They were thinking of the responsibilities of the members to enforce the Charter rather than of their obligations to observe it. This view appeared to be accepted by the provisions of Article 4 limiting original membership to the Allies in the war, that is to those who had signed the Declaration by United Nations of January 1, 1942; and confining eligibility to subsequent membership to 'peace-loving states' which accepted the obligations of the Charter and were 'able and willing' to carry them out. The provisions interpreted as giving each of the great powers a veto on new members and the provisions for expulsion of members which 'persistently violated the principles' of the Charter seemed also to support this point of view.²³

On the other hand, the universal principle was recognized in the provision authorizing the organization to ensure that non-members observe the principles of the Charter necessary for the maintenance of international peace and security.²⁴ Furthermore, the General Assembly was given authority to 'decide' on admissions to membership and the Security Council was given power only to 'recommend' on this subject.²⁵ If this were construed, as has been urged by the Argentine and other members of the United Nations, to permit the General Assembly to admit new members after examining the Security Council's recommendation, the

to adhere unswervingly.' (UNCIO, vol. 7, pp. 288, 307, 325). Brazil and some others took the same position as Uruguay. (*Ibid.*, vol. 8, p. 302).

²² *Year Book of the United Nations*, 1951, pp. 189-93; Daniel S. Cheever and H. Field Havilland, *Organizing for Peace*, International Organization in World Affairs, Boston, Houghton Mifflin, 1954, p. 372.

²³ Arts. 4 (2), 6. ²⁴ Art. 2 (6). ²⁵ Art. 4 (2).

United Nations would have approached universality much more rapidly. Such a construction was clearly supported by the committee that prepared the text at the San Francisco Conference.²⁶ The interpretation accepted in an advisory opinion by the International Court of Justice, with two Latin American judges dissenting, required a favourable recommendation by the Security Council.²⁷ In practice such

²⁶ Committee II (I), after it had approved the Dumbarton Oaks text on the subject, was presented the text which finally appeared in the Charter by the Co-ordination Committee. According to the record: 'The Committee was advised that the new text did not, in the view of the Advisory Committee of Jurists (Green H. Hackworth, U.S., Chairman; Hsu Mo, China; Jules Basdevant, France; Manuel Tello, Mexico; S. A. Golunsky, U.S.S.R.; Sir William Malkin, U.K.), weaken the right of the Assembly to accept or reject a recommendation for the admission of a new member or a recommendation to the effect that a given state should not be admitted to the United Nations. The Committee agreed that this interpretation should be included in its minutes as the one that should be given to this provision of the Charter and on this basis approved the text suggested by the Coordination Committee.' UNCIO, vol. 8, p. 495, June 19, 1945. See also *Ibid.*, vol. 8, p. 487-8. This statement, however, was not before Commission II which had already accepted the report of Committee I approving the Dumbarton Oaks text on May 31, 1945 (*Ibid.*, vol. 8, p. 30) or the Plenary Session which approved the report of Commission II (*Ibid.*, vol. 8, p. 299), although the latter session took place on June 27, 1945 after Committee I had adopted this interpretation of the text finally adopted. (*Ibid.*, vol. 1, p. 63).

²⁷ The majority of the Court advised that since the words of Article 4(2) 'in their natural and ordinary meaning' were unambiguous, it was not necessary to examine the 'travaux préparatoire', i.e. the records of the San Francisco Conference. It did however allude to the report of Committee II (I) by the remark: 'Reference has also been made to a document of the San Francisco Conference, in order to put the possible case of an unfavourable recommendation being voted by the Security Council; such a recommendation has never been made in practice. In the opinion of the Court, Article 4, paragraph 2, envisages a favourable recommendation of the Security Council and that only. An unfavourable recommendation would not correspond to the provisions of Article 4, paragraph 2.' Green Hackworth, Jules Basdevant, and Hsu Mo, though participating in the opinion of the Committee of Jurists at San Francisco concurred as judges of the Court in this advisory opinion. (International Court of Justice, Rep. 1950, pp. 4-57, *American Journal of International Law*, vol. 44, July, 1940, pp. 584, 586.)

recommendation has been considered subject to veto by the permanent members. This procedure resulted in a long deadlock on the admission of new members, happily broken by the tenth General Assembly which admitted sixteen²⁸ of the twenty-two states, most of which had been applicants for several years. Others have subsequently been admitted. A dozen states remain non-members but half of these are politically unimportant. The non-members include several very small states (Monaco, San Marino, Liechtenstein, Andorra and Vatican City), Switzerland which has not applied because of fear that its traditional neutrality might be impaired, Mongolia which has limited international relations and three states divided between Communist and non-Communist governments, Germany, Korea and Viet Nam. China, though a member, is represented by the Nationalist government with no control of China's 650 million people on the Mainland under a Communist government.²⁹

Thus 800 million people, nearly a third of the world's people, remain outside the United Nations. The more nearly

²⁸ Italy, Spain, Portugal, Ireland, Austria, Finland, Jordan, Libya, Ceylon, Nepal, Laos, Cambodia, Albania, Bulgaria, Hungary, Rumania.

²⁹ Of the 82 members of the United Nations, 25, including the United Kingdom, India and the Soviet Union, but not France or the United States, had recognized the Communist government of China by 1959. (See Quincy Wright, 'The Chinese Recognition Problem', *American Journal of International Law*, vol. 49, July 1955, p. 320 ff.) John Foster Dulles (*War or Peace*, New York, Macmillan, 1950, p. 190) wrote before becoming Secretary of State of the United States: 'If the Communist government of China in fact proves its ability to govern China without serious domestic resistance, then it, too, should be admitted to the United Nations. However, a regime that claims to have become the government of a country through civil war should not be recognized until it has been tested over a reasonable period of time.' In January 1954, after Communist China had been branded an aggressor for participation in the Korean hostilities and these hostilities had been terminated by an armistice, Mr. Dulles said, as Secretary of State before the Wiley Sub-committee, 'We believe China is adequately represented in the United Nations by the National Government of China which we believe represents the true aspirations and hopes of the Chinese people.' (Wiley Sub-committee, Hearings, United States Senate Committee on Foreign Affairs, Part I, p. 20.)

universal the United Nations becomes, the more reluctant would members be to withdraw and consequently the greater the influence it can exert. If many important states are not members, they may form powerful blocs outside the United Nations and seek to induce some members to withdraw from the United Nations and join them. Before he became Secretary of State but after he had had much experience in the American delegation to the United Nations, Secretary of State Dulles wrote :

I have come to believe that the United Nations will best serve the cause of peace if its Assembly is representative of what the world actually is, and not merely representative of the parts which we like. Therefore, we ought to be willing that all the nations should be members without attempting to appraise closely those which are 'good' and those which are 'bad'. Already that distinction is obliterated by the present membership of the United Nations.

Some of the present member nations, and others that might become members, have governments that are not representative of the people. But if in fact they are 'governments'—that is, if they 'govern'—then they have a power which should be represented in any organization that purports to mirror world reality.³⁰

In his statement to the Wiley Sub-committee on January 18, 1954, Mr. Dulles, then Secretary of State, presented the same argument and favoured 'approximate universality'.³¹

Universality of membership, thus making the United Nations an organization of the world, should be regarded as a fundamental objective and purpose toward which the United Nations should move as rapidly as possible.

During the period of deadlock most of the non-member states actually became associated with the United Nations through membership in one of the organs such as the International Court of Justice, the Trusteeship Council or a

³⁰ Dulles, *op. cit.*, pp. 188, 190.

³¹ Wiley Sub-committee, Hearings, Part I, p. 6.

regional commission under the Economic and Social Council, or through membership in one of the specialized agencies, or regional arrangements.³²

Other provisions of the Charter, concerning organs and procedures, have been interpreted flexibly to facilitate achievement of the purposes and principles. Most of the members have accepted the opinion that if existing procedures prove inadequate to realize the purposes and principles, other methods within the spirit of the Charter and not forbidden by its letter, should be devised. In fact interpretations, practices and supplementary agreements have resulted in much adaptation of these provisions. The liberal principle of Constitutional construction, practised by Chief Justice John Marshall, has been generally accepted by organs of the United Nations as applicable to construction of the Charter.³³

The Soviet Union, as noted, has insisted that the great power veto is the fundamental principle of the Charter and has shown no disposition to eliminate it, with the result that the Security Council has proved much less useful than

³² Cheever and Havilland, (*op. cit.*, pp. 878-9) indicate membership in the specialized agencies, and also in the Councils, Commissions and regional arrangements. This information can also be found in the *Year Book of the United Nations* and in *Everyman's United Nations*.

³³ 'We must never forget that it is a constitution we are expounding. . . . Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are Constitutional.' (*McCulloch vs. Maryland*, 1819, 4 Wheaton 316. See also *Gibbons vs. Ogden*, 1824, 9 Wheaton 1.) Professor Alf Ross of Copenhagen applied a similar standard to the Charter. 'You cannot appraise the Charter in the same manner as you appraise a scientific exposition. What from a formal point of view is a deficiency may from another point of view be an advantage. Too great clarity, too rigid exactness is not always desirable in a legal instrument. This applies especially to a text which is not destined to regular application by the courts, but—as a constitution—to serve as a basis for the legal life of a nation or a commonwealth of nations under ever-changing conditions. In such a case the flexibility conditioned by a certain vagueness and malleability in the drafting will be of far higher value than logical perfection.' (International Law Association, *op. cit.*, p. 16.)

anticipated in forwarding the purposes for which it was designed. Other great powers, while ready to regard the veto as inapplicable in respect to recommendations on membership and pacific settlement, cling to it in regard to collective security action. The result is that efforts to eliminate the veto are not likely to be successful so long as the amending procedure, in which the veto exists,³⁴ is respected. If this procedure were ignored the principle of universality would probably be frustrated through withdrawal of the Communist and perhaps other states.

It appears to be the predominant opinion that the principle of universality should be regarded as fundamental and, therefore, amendments to the Charter should not be pressed to the point of eliminating the participation of the Soviet and satellite states. This conclusion recognizes that progress toward adapting the organs and procedures of the United Nations, better to achieve its purposes and to maintain its principles, will probably be a slow process which will proceed more by interpretation, practice and supplementary agreements than by formal amendments.

The opinion, entertained by some unofficial groups, that it would be better to develop a strong United Nations even if the Soviet group of states withdrew, appears, therefore, to be incompatible with the basic purposes of the United Nations. It is generally believed that such a policy would tend toward war rather than peace. A United Nations thus truncated would not be an organization of the world to achieve the purposes and to maintain the principles of the Charter but would be regarded by the Soviet Union as an alliance against it. It would tend to accelerate the arms race and to eliminate the one general institution offering a promise of co-operation across the Iron Curtain.

This opinion does not deny the value of regional and collective self-defence arrangements provided they are kept within the conception of such special political arrangements set forth in the Charter itself. In this connection the recommendation of the Commission to Study the Organization of Peace in June 1953 deserves attention :

³⁴ Arts. 108, 109 (par. 2).

Every effort should be made to strengthen the United Nations so that no regional or collective defence arrangement can be more powerful in any situation. To this end the United Nations and the governments of the nations through diplomatic action should seek to stop a trend toward a bipolarized world by fostering various centers of power and committing each to United Nations' responsibilities.³⁵

3. *Ambiguities of the Charter*

Classification of the provisions of the Charter and identification of its general objectives is not adequate to guide the agencies and governments that have to apply it in their day-to-day work. Such guidance is important because it is through the continuous and proper application of the Charter that the United Nations develops as an institution.

The Charter, as has often been pointed out, is not a model of precise drafting. It is full of ambiguities and even inconsistencies making possible wide divergencies of interpretation and development. Some vagueness is inevitable in an instrument like the Charter. A precise document would probably never have been adopted by the governments, and if by a miracle it had been adopted, it would have proved incapable of functioning for any length of time in a changing world. Fortunately absolute precision is beyond the capacities of the ordinary language in which international instruments are drafted. There is always room for different interpretations and, as Professor Kelsen has pointed out, no interpretation can often be regarded as absolutely right.³⁶ Even if some of the operational clauses appear precise in their terms, the symbolic preamble and the broad assertions of purposes and principles provide ample opportunity for supplementing, complementing, or

³⁵ Commission to Study the Organization of Peace, 8th Report, Regional Arrangements for Security and the United Nations, New York, June 1953, p. 10.

³⁶ Hans Kelsen, *The Law of the United Nations*, London, Stevens, 1950. pp. xiv-xv and Supplement, 1951, pp. 911, 985.

modifying their apparent meaning. The Charter, however, because of the political circumstances of its birth, may suffer from an excess of poor drafting and consequent ambiguity. It has in fact within its terms potentialities of at least five quite different types of organization.³⁷

The first lines of the preamble (We the peoples) and the repeated emphasis upon individual rights looks toward a *world federation* in which the central agencies act directly upon individuals.

The theory expressed during the war of a nuclear alliance of the great powers to maintain peace,³⁸ the dominant position given the great powers in the Security Council, the broad discretionary powers given that body, and the obligation which its decisions impose on all members, opens the door for a five-headed *world empire* if the Big Five should ever be able to unite. It has been pointed out, especially by citizens of the smaller states, that the continued liberties of the small states is dependent upon the continued division of the great powers, in spite of their asserted nuclear alliance. The fear of a development in this direction seems to have contributed to the unwillingness of Switzerland to join.³⁹

The improbability of such unity, the limited power given the General Assembly, and the broad reservations of equal sovereignty, domestic jurisdiction, and self-defence by the members suggest a continuance of *balance of power politics* in which the Great Powers will play a major role both within and without the United Nations. The present emphasis upon this interpretation in the practice of the great powers is obvious.

³⁷ Quincy Wright, 'Accomplishments and Expectations of World Organization', *Yale Law Journal*, Aug. 1946, vol. 55, p. 883 ff.

³⁸ Walter Lippmann, *U. S. Foreign Policy, Shield of the Republic*, Boston, Little Brown, 1943, p. 161 ff. This idea is inherent in the Moscow declaration of October 30, 1943, on General Security incorporated in Article 106 of the United Nations Charter.

³⁹ W. E. Rappard, 'The United Nations as viewed from Geneva', *American Political Science Review*, June 1956, vol. 40, p. 549, and *Ibid.*, *The Quest for Peace, Yesterday and Today*, David Davis Memorial Institute, April 1954, p. 30 ff.

Sceptics who emphasize the veto vote in the Security Council, the limitation of the powers of other organs to study and recommendation, the consequent lack, in any of the organs of the United Nations, of powers which are both authoritative and operative, look upon the Charter as primarily an affirmation of *moral principles* and a forum for their discussion.

Most writers, however, look upon the United Nations as an *international organization* within which states have undertaken definite obligations and responsibilities, and which provides agencies for co-operation to stated ends and procedure for the assumption of further obligations in the future. This interpretation is at present formally accepted by governments and applied by United Nations organs.

As the United States constitution had within it up to the Civil War potentialities both of a United Nation and of an alliance among sovereign states with powers of nullification reserved by each, so the United Nations Charter has within it potentialities of world federation, world empire, power politics, unsanctioned moral commitment, and international organization. The latter concept, most widely accepted, represents a position of unstable equilibrium among the other possibilities.

These extraordinary ambiguities and possibilities of divergent development, render the problem of Charter interpretation of the greatest importance. The future of the United Nations is not determined by the Charter but by what is made of it as history progresses.

4. *Interpretation of the Charter*

The problem of interpretation divides into two problems: Who shall interpret? And what standards shall be applied?

Neither of these questions will be examined in detail. Others have done that authoritatively and comprehensively.⁴⁰ The last word, however, has not been said. 'The life

⁴⁰ See Kelsen, *op. cit.*; Leland M. Goodrich, and Edward J. Hambro, *Charter of the United Nations' Commentary and Documents*, Boston, World Peace Foundation, 1949.

of the law', as Justice Holmes remarked, 'has not been logic: it has been experience.'⁴¹ It is to be expected that the Charter will develop new means and standards of interpretation as experience increases and conditions change. This situation is not to be regretted. Flexibility is the essence of life. Rigidity is death.

The Charter leaves the door wide open for any organ, or even for the members individually, to interpret it. It is to be hoped that the ultimate authority of the members in this matter will not be widely accepted. It is a principle of international law that no party can give a definitive interpretation to a treaty.⁴² And this should apply all the more to a constitution such as the Charter. The majority of the people of the United States would not tolerate the claim of a state of the Union to nullify the Constitution. If a treaty or constitution means any commitment at all, it means that the members are precluded from definitive self-interpretation. There is no reason why this should not apply to the provisions concerning domestic jurisdiction and self-defence as well as to all other articles of the Charter. In principle only international agreement, or international authority can finally determine the validity of a state's claim that a matter is essentially within its domestic jurisdiction or that it is exercising an inherent right of individual or collective self-defence.⁴³

It also seems to me that the characterization of the International Court of Justice as the principal judicial organ of the United Nations,⁴⁴ the obligation of parties to a dispute before the Court to comply with its decision,⁴⁵ and the assumption of the optional clause of the Court statute that 'the interpretation of a treaty' should be submitted to the Court,⁴⁶ make it clear that the Court's interpretation of the

⁴¹ O. W. Holmes, *The Common Law*, Boston, 1881.

⁴² This flows from the principle, sometimes referred to as 'natural law' that no one should be judge in his own case. Hobbes, *Leviathan*, chap. 15; Locke, *Second Treatise of Civil Government*, chap. 2; Dr. Bonham's Case, 8 Coke Rep. 107a, 114a (1600). See also Vattel, *Le Droit des Gens*, I, Pt. 2, c. 17, sec. 265.

⁴³ J. L. Brierly, *The Law of Nations*, 4th ed., Oxford, 1949, p. 295 ff.

⁴⁴ Charter, art. 92. ⁴⁵ *Ibid.*, art. 94.

⁴⁶ Statute, International Court of Justice, art. 36.

Charter is authoritative for parties to disputes before it on this subject, and should be regarded by other states as of greater weight than interpretations by any other body. Advisory opinions are doubtless of less formal authority, but it would seem that on the whole the Court is the most authoritative body for interpreting the Charter.

This does not mean however that it is desirable that the Court should interpret all articles of the Charter. The Supreme Court of the United States has recognized that some clauses of the Constitution are of a political character and should be interpreted by Congress or the President.⁴⁷ The International Court of Justice might well take a similar view of some clauses of the Charter.

Judicial interpretation, because of its authority, its precision, and the rationalization inherent in the judicial process, closes the door to future development more than does political interpretation. The hesitancy of the political organs of the United Nations in asking opinions of the Court may, therefore, have merit. Some may think that the General Assembly might well have been even more cautious in this regard.⁴⁸ A balance between the precision which facilitates action and the ambiguity which facilitates progress should be preserved. The practice of political interpretation by the General Assembly and the Councils may have much to commend it. Yet it appears that confidence and stability might be promoted by a somewhat more frequent resort to the Court.

Political interpretations are seldom explicit and almost never involve consideration of the standards adopted. The majority in a political body takes the action deemed expedient in the circumstances, thereby indicating that it regards its action as in accord with the Charter, but with a

⁴⁷ For example, the question of what constitutes a 'republican form of government' guaranteed to the states (Constitution, art. 4, sec. 4), *Luther vs. Borden*, 7 How. 1, 1848; *Texas vs. White*, 7 Wall. 700, 1868; *Pacific States Telephone and Telegraph Co. vs. Oregon*, 223 U. S. 118, 1912.

⁴⁸ For example, the advisory opinions on article 4 of the Charter may have increased the difficulty of expanding the membership of the United Nations.

minimum of argument. Pushed to the extreme this would render the Charter a legal nullity and would encourage states to ignore recommendations which they regard as *ultra vires*. Some appreciation of standards of interpretation is important but those standards should not be too precise.

There has been much discussion as between 'effective interpretation', which gives weight to the purposes of the organization, and 'restrictive interpretation', which assumes that states have not parted with their sovereignty or limited its exercise unless they have agreed to do so expressly and explicitly.⁴⁹ The first standard permits any organ to act when necessary and proper to carry out the purposes of the Charter unless explicitly forbidden or unless the proposed action is clearly contrary to the general intentions of the instrument. This principle of liberal interpretation was frequently asserted by Chief Justice Marshall as applicable to the Constitution of the United States⁵⁰ and was doubtless responsible for the adaptation of that instrument to a rapidly changing situation, although it may also have contributed to the emergence of an exaggerated movement of states rights eventuating in civil war.

The standard of restrictive interpretation, on the other hand, forbids any organ to act except in accord with procedures explicitly provided and on matters explicitly within its competence. Such a standard was behind the States Rights movement in the United States before the Civil War and is still to be found in some southern states.

It can be said that the organs of the United Nations have followed the standard of effective interpretation rather consistently. Certain states have, however, asserted the restrictive standard on occasion and have utilized it to justify themselves in ignoring resolutions of United Nations organs. Doubtless the principle of effective interpretation is essential if a constitutional document such as the Charter is to grow and adapt itself to new conditions. It must, however, be

⁴⁹ H. Lauterpacht, 'Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties', *British Year Book of International Law*, 1949, p. 48 ff.

⁵⁰ *McCulloch vs. Maryland*, 4 Wheaton 316, 1819. (See note 33).

applied with discretion, or the United Nations may tread so heavily upon vested interests, and prerogatives, that it will stimulate revolts perhaps disrupting the institution. Let us discuss briefly three general problems of the United Nations in which standards of interpretation have been important, reserving for the next two chapters the major problems of ' domestic jurisdiction ' and ' aggression '.

5. *Planning and Co-ordinating Functions*

The first problem may be formulated: Should the United Nations confine its activity to co-ordinating the national policies and settling the controversies and conflicts of its members, or should it develop a policy of its own and attempt to subordinate the policies of its members to that policy? The difference is clearly one of degree. Even if the United Nations confined its activity to co-ordinating the policies of its members it would be manifesting a minimum policy of its own, namely, a policy of ameliorating conflicts, settling controversies, and maintaining peace among its members. The issue is, to how great an extent should the United Nations seek to formulate general policies observance of which would be likely to *prevent* conflicts, controversies and wars from arising. On the one hand it may be said that preventive policies formulated in advance necessarily seek to plan and control the future and consequently limit the independence of those subject to the policies. It may be said, on the other hand that an ounce of prevention is worth a pound of cure. The United Nations would be too late to be influential if it had to wait until a crisis had arisen.

There can be no doubt but that the Charter contemplates planning and recommendation with a view to preventive action especially in the fields of armament regulation; the organization of United Nations policing forces; the development of international law; promotion of economic and social welfare; promotion of culture, education, health and respect for human rights; and the development of self-government in non-self-governing territories. It is also

clear from Article 103 that in so far as the members have by the Charter undertaken obligations in these matters they are bound irrespective of obligations under other instruments.

It is true, however, that the Charter itself imposes few obligations in these fields beyond the implied requirement that the members consider recommendations and contribute to their making through discussion and voting in the organs of the United Nations. Obligations to discuss and to consider are not obligations to accept and apply. Exceptions in the *economic and social field* may be found in Article 56, by which the members 'pledge themselves to take joint and separate action in co-operation with' the United Nations to promote economic and social progress and respect for human rights; in Article 73, by which the members responsible for the administration of non-self-governing territories accept 'as a sacred trust the obligation' to develop the 'well being' and 'self government' of the inhabitants of those territories; and Article 87 which authorizes the Trusteeship Council under authority of the General Assembly to take 'action' in conformity with trusteeship agreements obliging the administering state. In general the members do not assume specific obligations or confer legal power on United Nations organs, for preventive action in the economic and social field. The major obligations of members under the Charter, or in respect to actions taken by United Nations organs, are in the political field. These are set forth in Article 2, and more precisely in Article 25 and Chapters 6 and 7. These obligations concern the prevention and stoppage of hostilities, and the settlement of disputes likely to endanger the maintenance of international peace and security. The Security Council may take preventive action in these fields because of its competence to deal authoritatively with 'threats to the peace'⁵¹ and 'to investigate situations which might lead to international friction or give rise to a dispute'.⁵²

⁵¹ Art. 39.

⁵² Art. 34. The extent to which the Security Council can 'decide' disputes which 'threaten' the peace is controversial. Articles 36 and 37

Obviously these powers could be expanded to a comprehensive and detailed formulation of policy or law of preventive character, but apparently a somewhat restrictive interpretation of 'threats' and 'situations' was intended.⁵³

The intent of the Charter was apparently to provide facilities for co-ordinating the policies and settling the controversies and conflicts of its members. But it was assumed that the process of co-ordination and pacific settlement might lead to general conventions which could be considered formulations of United Nations policy binding on all the members which ratified. It is thus clear that the development of an authoritative United Nations policy was not precluded, but, because of the need of wide individual ratification by the members, it was assumed that such a development would not be very rapid.

There is, however, an issue concerning the influence of recommendations. The General Assembly and the Councils within their respective fields, can make recommendations on any matter within the broad purposes of the Charter. This growing mass of recommendations might be said to constitute a United Nations policy. Even though members are not under a legal obligation to observe these recommendations, they may be under a moral or political obligation which would be effective in proportion as a public opinion, giving support to the United Nations, develops within each member state.

One particular field where the problem under consideration is important concerns the relation of collective security action under Articles 39-50; of collective self-defence and regional arrangements under Articles 51-54; and of recommendations for the maintenance of international

permit only 'recommendations' and Chapter VII permits 'decisions' only 'to maintain or restore international peace and security', see Sir Frederick Eggleston, in *Paths to Peace* (W. H. Wallace, ed.) Melbourne and Cambridge University Press, 1957, p. 325 ff.

⁵³ These terms, while suggesting less immediacy of hostilities than the terms 'breach of the peace' or 'act of aggression' (art. 39), suggest more immediacy than the expression 'questions relating to the maintenance of international peace and security' (art. 11) and situations 'likely to impair the general welfare or friendly relations among nations' (art. 14).

peace and security under Articles 10-14. It is clear that only the Security Council can take authoritative action in the name of the United Nations as such to deal 'with threats to the peace, breaches of the peace, and acts of aggression'. The Charter states a policy involving investigations, determinations, provisional measures, economic measures, and military measures planned and operated through a Military Staff Committee and a United Nations Command, all under Security Council decisions. It is also clear that the procedures of the Security Council, involving the great power veto, has rendered these provisions useless for initiating action against a great power and that the actual development of events has seriously impaired their use for coercing lesser powers, thus reducing the functions of the Security Council to diplomatic interchange.⁵⁴ The effectiveness of these provisions in initiating the United Nations operation against aggression in Korea was exceptional because of the voluntary absence of the Soviet Union from the Security Council. As a consequence the United Nations has sought to achieve the same result by co-ordinating the policies of the members through regional arrangements, collective self-defence arrangements, and General Assembly recommendations. There can be no doubt that such recommendations, contemplated by the Uniting for Peace resolution of November 1950, are not 'action' of the United Nations in the sense of Article 11, paragraph 2 of the Charter. They are recommendations for the co-ordination of the policies of states and regional groups, but from them a United Nations policy may develop which will be effective in most emergencies. It seems certain that any member utilizing armed forces in accord with such recommendations would not be acting in a manner 'inconsistent with the purposes of the United Nations' in the sense of Article 2, paragraph 4 of the Charter. It cannot be said that the organization of collective security policies through General Assembly recommendations

⁵⁴ See Sir Leslie Munro, 'The Present Day Role of the Security Council in the Maintenance of Peace', *Proceedings, American Society of International Law*, 1955, p. 131 ff.

violates the Charter, although it undoubtedly is a procedure different from that contemplated at San Francisco.

Experience suggests that the United Nations should go slowly in formulating its own policies and should aim rather at co-ordinating the policies of its members. It should be aware however that through such co-ordination, United Nations policies will develop in time. A suitable standard of interpretation should assume that the members are equal sovereign states and are free to pursue their own policies except in so far as they have assumed definite international obligations. They are however, bound to make genuine efforts to co-ordinate their policies through United Nations discussions and recommendations in order to achieve the purposes of the United Nations. Only custom and supplementary agreements can develop firm United Nations policies obliging its members, beyond their somewhat limited commitments in the Charter itself.

6. *Legal and Political Settlements*

Another problem of interpretation concerns the relation of law and politics in the settlement of international disputes. Should the United Nations prefer legal or political settlements? The insertion of the words 'justice' and 'international law' in Articles 1 (1) and 2 (3) of the Charter as limitations upon the discretion of the Security Council and other organs in making decisions or recommendations for the settlement of controversies was in response to the fear of small states that their rights might be ignored in possible 'appeasements' of potential aggressors. Recognition in Article 36 of the general rule that members should submit legal disputes to the Court and in Article 94 of the obligatory character of the Court's decisions had a similar intention.

However the Charter gives a priority to political settlements. The obligation to submit to the Court depends on the consent of the parties which may be manifested by acceptance of the optional clause, of a general treaty obligation, or of a *compromis* concerning a particular dispute.

In the absence of such consent the dispute must be settled peacefully, but the Charter shows no preference as between 'negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means' chosen by the parties.⁵⁵ If none of these methods are effective and international peace and security are threatened the matter must go before the United Nations. It may be dealt with by the Security Council, or, if that body fails to function, by the General Assembly, but in either case political considerations can be expected to play a major role. Only rarely have advisory opinions been sought from the Court although the Assembly passed a resolution urging more frequent use of this procedure.⁵⁶

Is this desirable? Doubtless a system which gave a state final power to demand a judicial determination of any controversy would make for rigidity and preservation of the *status quo*, although a wise court may, as the Supreme Court of the United States has illustrated, bring about a good deal of peaceful change.⁵⁷

On the other hand a system which gave final authority to political bodies committed to keeping the peace would be likely often to sacrifice justice for peace, especially when the peace is threatened by a powerful state.⁵⁸ Furthermore, a system which provides no compulsory international forum unless international peace and security is threatened may give an advantage to the truculent. The accepted interpretation, which limits the authoritative action of the United Nations to ending hostilities or immediate threats, has resulted in cease fire lines, as in Palestine, Kashmir, and Korea, but failure to settle the disputes which led to the

⁵⁵ Charter, art. 33.

⁵⁶ Resolution, General Assembly, Nov. 14, 1947, U.N. Doc. A, 459, *American Journal of International Law*, Jan. 1948, vol. 42, p. 17.

⁵⁷ C. Herman Pritchett, *The Roosevelt Court*, New York, 1948.

⁵⁸ As for example in the Munich agreement of September 1938 in which the rights of Czechoslovakia were sacrificed by agreement of Great Britain, France, Italy and Germany to appease Hitler. Q. Wright, 'The Munich Settlement and International Law', *American Journal of International Law*, Jan. 1939, vol. 33, p. 12 ff.

hostilities and threatens their renewal. It seems doubtful whether any general standard of interpretation can solve this problem. It is a matter which the political organs should themselves solve by exercising wise discretion to request an advisory opinion or to recommend a judicial settlement by the parties when the total situation indicates no sufficient reason for important changes of the *status quo* and to utilize conciliatory methods or to mobilize world opinion behind recommendations for a political settlement by compromise or plebiscite when such changes are indicated. Advisory opinion on certain aspects of a dispute may sometimes assist in achieving such a political settlement.

7. *Universal and National Values*

A third problem of interpretation concerns the values which international institutions should support. Should the United Nations seek to develop universal values or should it rather encourage mutual toleration of national values? This problem is closely related to the other two discussed. Development of a United Nations policy and encouragement of judicial settlement of disputes imply faith in a more comprehensive body of universal values than do political actions to co-ordinate national policies or to adjust international disputes.

Advocates of world government and cosmopolitanism are so impressed by the shrinking of the material world and the need of a unified moral world to regulate it, that they believe adjudication, legislation, education and propaganda should co-operate to discover or to create universal standards of value before it is too late. Nationalists on the other hand believe culture and values to be indigenous growths involved in local conditions and traditions, and incapable of artificial creation. Consequently they believe that the most that can be expected is mutual toleration and perhaps respect by each group for the culture and values of others.

On this issue the United Nations has taken a middle ground. While recognizing that diversity of cultures exists and is probably desirable, it assumes that peace implies

coexistence, toleration, and mutual respect. These terms themselves imply some values which should be accepted by all states. Toleration is only possible if people are willing to subordinate the immediate expansion of the values they believe in, to the superior value of a spirit of toleration. Mutual respect is hardly possible unless such respect is regarded as a value superior to the destruction of a value system deemed inferior. Peace is not possible unless its maintenance is considered by all a value superior to the forcible expansion of an ideology, a religion, a way of life, a national interest or any other value with which it may be confronted. States seized with a missionary zeal for the spread of an ideology which they deem of absolute value can hardly 'practice tolerance and live together in peace with one another as good neighbours' as called for by the preamble of the Charter.⁵⁹

The preamble, the purposes, and the principles stated in the Charter constitute a value system which the members of the United Nations have accepted, and this system is elaborated by the Universal Declaration of Human Rights, accepted in 1948 by the United Nations General Assembly without dissent, the Soviet bloc abstaining. These purposes and principles might be co-ordinated into a philosophical system but the expediency of such an effort may well be questioned.

The discussions in UNESCO concerning its philosophy indicated that premature formulation would be undesirable even if possible⁶⁰ and an effort initiated by UNESCO, to

⁵⁹ Q. Wright, 'The Problem of Establishing and Maintaining a Stable World Society', 10th Symposium on Science, Philosophy and Religion; 'Perspectives on a Troubled Decade', Lyman Bryson, Louis Finkelstein, and R. M. MacIver, eds., New York, 1950, p. 286. Q. Wright, *The Study of International Relations*, pp. 348 ff. 'International Ethics'.

⁶⁰ After Director Julian Huxley's pamphlet suggesting 'evolutionary humanism' as a philosophy of UNESCO had been attacked by the advocates of 'dialectical materialism' and of Christianity in the first conference, 1946, he came to see that 'efforts to draw up such theoretical principles... might be actively harmful, for attempts at precise formulation would almost certainly provoke exacerbating conflicts of ideology'. Report of the Director General for 1947, p. 11.

state the philosophy underlying the Universal Declaration of Human Rights has indicated far greater agreement upon the specific rights which should be respected than upon any philosophical foundation for them.⁶¹

While it is doubtless true that human communication and commerce, and the expansion of technologies and knowledge tend to produce a common culture including both beliefs and evaluations, it is also true that the expression of these values is likely to differ because of the differences in the symbol patterns in different areas. This is a field in which natural development is to be preferred to artificial stimulation.⁶²

8. *Standards of Interpretation*

If the United Nations is to endure and to increase in service to the nations and to mankind, its functions, powers and procedures should be interpreted so that its claim to authority will always be in pace with the opinion of peoples and nations necessary to make that claim effective. Attempts to act when predominant world opinion opposes will fail and may induce reactions of parochialism and extreme nationalism. Neglect to act when predominant world opinion demands leadership may result in disillusionment, disintegration and chaos. While the policies of governments usually reflect the opinion of their respective peoples, the United Nations should be alert to situations in which they do not. It is from the opinion of the peoples and the nations that the United Nations draws its strength.

A suitable standard of interpretation should seek to keep the United Nations in the narrow channel between the Scylla of premature initiative and the Charybdis of neglected opportunity, in a world of rapidly changing conditions and opinions. The text of the Charter should be read with proper

⁶¹ Human Rights, Comments and Interpretation, A symposium prepared by UNESCO, with an Introduction by Jacques Maritain, London, 1948.

⁶² Q. Wright, *The Study of International Relations*, New York, 1955, pp. 438 ff., on 'International Ethics'.

balance among the purposes stated, the reserved rights of the members, the procedural restrictions upon the organs, and the requirements of the situation of fact and opinion at the time the interpretation is made. The United Nations cannot develop if it is tied to obsolete conditions and opinions, however influential they may have been in the making of the Charter, nor can it develop if it ignores limitations and procedures which protect vested rights of its members. It must attempt continually to balance rights of the past and aspirations of the future, with requirements of the present.⁶³

In applying these standards, the United Nations has generally manifested a conservative tendency, maintaining its character as an international organization and resisting pressures to become a world government. It has sought to co-ordinate national policies rather than to formulate and achieve policies of its own. It has accepted established international law and urged settlement of international controversies by judicial methods unless concepts of a higher justice embodied in the purposes expressed in the Charter indicated the need of change and the emergence of new principles of international law on certain matters. It has urged toleration and mutual respect for the divergent cultures and value systems of its members without attempting to formulate universal standards of international ethics beyond those of established or emerging international law.

These observations apply not only to the organs of the United Nations itself, but also to those of the specialized agencies. In their activities, whether economic, social, educational or political, these organs have recognized the danger of overcentralization, either geographic or functional. They have assumed that local, national, or regional agencies should be free to act so far as they can; that action on a universal basis is justifiable only when problems are faced which cannot be adequately dealt with on a lesser basis; that distinct functions should be dealt with by distinct agencies; and that authoritative action by a general

⁶³ Q. Wright, 'National Courts and Human Rights—The Fujii Case', *American Journal of International Law*, Jan. 1951, vol. 45, p. 478 ff.

international agency is permissible only within, or in respect to, states which have undertaken explicit obligations and only within the scope of those obligations. In the main the action of the United Nations has been to inform, to analyse, to recommend, and to co-ordinate not to decide or to order.

Exceptions to this practice have arisen in respect to the interpretation and application of Charter provisions concerning human rights, the self-determination of peoples, and the maintenance of international peace and security. Action in these fields has led to widely differing interpretations of the prohibition against United Nations intervention in matters essentially within the domestic jurisdiction of a state. In these fields particularly, it has been suggested that new principles of international law, different from those of the nineteenth century, have been emerging during the twentieth century, and have become obligatory on members of the United Nations through their acceptance of the Charter. This problem will be considered in the next two chapters.

CHAPTER III

DOMESTIC JURISDICTION AND THE COMPETENCE OF UNITED NATIONS ORGANS¹

THE term domestic jurisdiction is used in the United Nations Charter, as it was in the League of Nations Covenant, to draw the line between the spheres of action of the international organization and of the member states. It is therefore important to determine what the term means and who is competent to apply it in particular situations. Upon the answer to these questions depends on the one hand the competence of the organs of United Nations to give practical effect to its purposes and on the other the freedom of the governments of member states to pursue national interests as they see them.

The problem is similar to that faced by every state of considerable size in providing for the distribution of power between central and local authorities.

1. *The Geographical Distribution of Political Power*

In centralized states, like Great Britain and France, all authority is in principle vested in the central government. Local authorities are considered agents of the central government and can only exercise such powers as are delegated to them. A great deal of home rule may be delegated to the governments of cities, provinces, or colonies, but in principle this delegation can be modified at any time by act of the central authorities.

In federations, like the United States, Canada, Australia, and Switzerland, the distribution of power between the

¹ This chapter utilized a paper submitted by the author to the Commission to Study the Organization of Peace in July, 1954 published in the Ninth Report of that Commission on Charter Review Conference, New York, 1955, pp. 42 ff.

central government on the one hand and the states, provinces, or cantons on the other is made by a constitution which cannot be changed by ordinary legislation. The distribution may be effected by enumerating specific powers delegated to the central government leaving all others to the states, as in the United States^{1a} or it may be effected by enumeration of specific powers to the provinces leaving all others to the central government as in Canada.² In either case, however, the central government has direct power over individuals on certain matters and some authority has to interpret the constitution in particular cases. This authority is usually vested in an organ of the central government. In the United States this function is performed in the main by the Supreme Court, which not only interprets and applies the constitution but also observes the principle of federal supremacy under which any power constitutionally exercised by a federal organ nullifies any conflicting exercise of power by a state government.³ Before the Civil War the doctrine of 'nullification' was occasionally urged by statesmen, under which the power to interpret the constitution, at least in respect to certain matters, would have been vested in the states. While this doctrine was never accepted by the Supreme Court, that body has held that certain 'states' rights', as for instance to enjoy a republican form of government, are political questions to be interpreted not by the courts but by the Congress.⁴ In general, however, the interpretation of federal powers overriding state action has been a function of the Supreme Court.

In confederations, such as the United States under the Articles of Confederation, 1783-89, and the Germanic confederation, 1815-67, powers are similarly distributed by a constitutional instrument. But the sovereignty of the states, apart from powers delegated to the central government, is usually more explicitly stated. Federal powers

^{1a} United States Constitution, 10th amendment.

² British North America Act, 1867, art. 91.

³ U. S. Constitution, art. 6.

⁴ *Luther vs. Borden*, 7 Howard 1, 1848.

usually apply only to states and not to individuals. Prohibitions against the exercise of certain powers by the states are usually more explicitly stated and the authority to interpret and apply the constitution usually belongs to a central political body rather than to a court. Thus the United States' Articles of Confederation provided that 'each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in congress assembled.'⁵

'Every state shall abide by the determination of the United States in congress assembled on all questions which by the confederation are submitted to them.'⁶

The distribution of authority between member states and the organs of international organizations is similar to that in confederations but the powers accorded to the central organs are usually much less extensive since they consist mainly of powers of recommendation rather than of decision; the limitations upon the exercise of power by states are less clearly specified since they depend upon the interpretation of the term 'domestic jurisdiction' which acquires meaning not from the constitutional instrument itself but from the general body of international law within the community of nations; and the authority to interpret and apply this term is often left unclear and may be affected by different procedures in different circumstances. States have sometimes asserted that they are competent to interpret and apply this term in particular situations, a doctrine similar to that of 'nullification', which, by paving the way to varied interpretations of the authority of the central organs in different states, would tend to disintegrate the international organization.

This review indicates that there is an increase in both the extent and the effectiveness of central authority as constitutions progress from international organization and confederation to federation and centralized government. Constitutions of course vary greatly in detail and no sharp line can be drawn between these four types. A federation may

⁵ Articles of Confederation art. 2. ⁶ *Ibid.*, art. 13.

retain some aspects of confederation or even of international organization, as did the German Empire of 1871 which left some diplomatic powers and broad powers of administering federal law to the constituent states. An international organization may have some aspects of confederation or even of federation, as does the United Nations and the developing institutions of Western Europe, which anticipate systems for protecting human rights within the states.⁷

2. *The Competence of United Nations Organs*

The provisions of the United Nations Charter distributing power between the central organs and the member states have been extensively debated and have been variously interpreted leading to two schools of thought, one wishing more precise definition and more legalistic procedures and the other preferring gradual evolution and political interpretation.

The United States took the latter position at the San Francisco Conference where John Foster Dulles, speaking for the United States and the other sponsoring powers, said the 'principle' of the domestic jurisdiction article 'was subject to evolution' and might permit the organs of the United Nations gradually to assume wider authority than was originally envisaged as, he pointed out, had been true in the parallel case of the relations of the states and the federal government in the United States.⁸

This prediction has been amply borne out in practice. At San Francisco some delegates thought that the domestic jurisdiction article would give each state a right of self-interpretation of its domestic jurisdiction thus permitting every state involved in a dispute or situation to veto action by United Nations Organs, other than enforcement action

⁷ Quincy Wright, 'Western European Union', Commission to Study the Organization of Peace, 8th Report, *Regional Arrangements for Security and the United Nations*, New York, June 1953, p. 80 ff; *Ibid.*, 'Human Rights and Charter Review', *Annals of American Academy of Political and Social Science*, Nov. 1954, vol. 296, p. 52.

⁸ *United Nations Conference on International Organization*, Records, UNCIO, vol. 6, p. 508.

under Chapter VII. The latter type of action could only be vetoed by a permanent member of the Security Council, since it was expressly excluded from the domestic jurisdiction article. It was, however, immediately perceived that such an interpretation would seriously impair the capacity of the United Nations to carry out many of its important functions. Consequently in practice each organ has decided its own competence, thus itself interpreting the meaning of domestic jurisdiction.

In the General Assembly the issue of competence is regarded as an 'important question' to be decided by a two-thirds vote but when the question has arisen, as in the issue of South African treatment of resident Indians and the enforcement by that country of racial segregation or *apartheid* laws, the Assembly has in most instances held itself competent. In one case, that of resolutions introduced by Yugoslavia and the Soviet Union proposing to call upon the Greek government not to execute certain trade union leaders who had been found guilty by Greek courts of sedition, the Assembly decided explicitly that it lacked competence. Yet even in this case a more discreetly worded resolution to the same effect was subsequently introduced by France and adopted.⁹

In general, the Assembly has not acted directly when the issue of competence has been raised but has indicated its attitude by its vote on a proposed resolution. Passage of a resolution recommending appropriate action by a member state is assumed to constitute an assertion by the General Assembly of its own competence and to deny that the matter is within the domestic jurisdiction of the state addressed.¹⁰

In the Economic and Social Council and in the Security Council the question of competence has always been dealt with in this manner, though committees have on a few

⁹ United Nations, *Repertory of Practice of United Nations Organs, (Rep.)*, 5 vols. New York, 1955, vol. 1, p. 79, art. 2 (7) secs. 89, 98; Aleksander W. Rudzinski, 'Domestic Jurisdiction in United Nations Practice', *India Quarterly*, Dec. 1953, vol. 9, p. 326.

¹⁰ Clyde Eagleton, 'The Yardstick of International Law', *Annals, op. cit.*, Nov. 1954, p. 72.

occasions expressed opinions on the issue.¹¹ In the Security Council the issue of competence has been considered substantive and therefore subject to veto, but since the issue would normally be presented by a state claiming that a matter under discussion is within its domestic jurisdiction, the resolution declaring the Security Council incompetent could not be passed without unanimous consent of the permanent members. One such member could, therefore, by vetoing such a resolution determine that the Security Council is competent. If the resolution were presented the other way declaring the Security Council competent, a single permanent member by its veto could render that body incompetent. Because neither of these results would seem appropriate, the direct issue of competence has never been put in the Security Council although in many instances the Security Council has answered the question by passing resolutions dealing with problems which a member state claimed to be within its domestic jurisdiction, as for example, in the Indonesian incident.¹²

In the League of Nations the parallel article authorized the Council to decide upon its competence but it was expressly required to apply the standard of international law and therefore customarily requested an advisory opinion of the Permanent Court of International Justice when the issue was raised. Because the reference to international law does not appear in Article 2, paragraph 7, of the Charter, such requests have seldom been made by United Nations organs. The issue is usually treated as political¹³ with the result that domestic jurisdiction has proved

¹¹ On Spanish Question, see *Rep.*, vol. 1, p. 107, art. 2 (7), secs. 236-7, 243; on Greek question, *Rep.*, vol. 1, p. 113, art. 2 (7), sec. 267.

¹² *Rep.*, vol. 1, p. 117, art. 2 (7), secs. 282, 284. The so-called 'double veto' in the Security Council has arisen because it is alleged that the chairman's ruling that a resolution is procedural can be overridden by the veto of a great power.

¹³ The Commission on the Racial Situation in South Africa reported to the General Assembly in 1953: '... the organs of the United Nations take the final decision on competence, on whether, from a political standpoint, the question before them is or is not within the domestic jurisdiction of the State and whether it is sufficiently serious and important to

less important as a limitation of competence. The reason for this is obvious. If in a political organ a sufficient majority wishes, in an immediate situation, to pass a resolution it is not likely to be deterred by theoretical doubts raised concerning its competence when it has the power itself to resolve those doubts in its own favour. This is all the more true because of the vagueness of the standard to be applied in determining whether a matter is within the domestic jurisdiction of a state.

3. *Domestic Jurisdiction and the Charter*

Article 15, paragraph 8, of the League of Nations Covenant provided 'if the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the *domestic jurisdiction* of that party, the Council shall so report, and shall make no recommendation as to its settlement.'

Chapter 8, section A (7) of the Dumbarton Oaks proposals was similar though it was less explicit as to the authority to apply the provision. It provided 'the provisions of paragraphs 1 to 6 of Section A shall not apply to situations or disputes arising out of matters which by international law are solely within the *domestic jurisdiction* of the state concerned.'

Article 2 (7) of the Charter introduced important modifications following a draft submitted to the San Francisco Conference by the sponsoring powers. It reads: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the *domestic jurisdiction* of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

These paragraphs are alike in using the words 'domestic jurisdiction' in the English text. The meaning of the term is made clear in the French text of the Covenant which

arouse international concern . . . ' General Assembly, 8th session, *Off. Rec. Supp. No. 16, A/2505*, p. 22, quoted Eagleton, *op. cit.* p. 74.

reads '*une question que le droit international laisse a la competence exclusive de cette partie*,' thus implying that a matter is within a state's domestic jurisdiction (*competence exclusive*) unless its discretion in dealing with it is limited by international obligations which it owes to other states involved in the dispute. While the French text of the Charter provision is less clear (*dans des affaires que relevent essentiellement de la competence nationale d'un Etat*), practice, and opinion of the International Court of Justice have held that in so far as a state's discretion in dealing with a matter is limited by its obligations under either general international law or treaties, the matter is not within its 'domestic jurisdiction'.¹⁴

The Charter provision differs from the Covenant provision (i) in omitting any indication of the authority to interpret and apply it; (ii) in qualifying domestic jurisdiction by the word 'essentially' instead of by the word 'solely'; (iii) in omitting reference to 'international law'; (iv) in applying to activities of the United Nations other than the handling of disputes; (v) in applying not only as a limitation upon the United Nations, but also as a freedom of the members; (vi) in excepting 'enforcement measures'; and (vii) in limiting the competence of the United Nations only in respect to 'intervention'.

1. The effect of the failure to specify the interpreting authority has been discussed. It has meant that actually each organ of the United Nations has interpreted the article itself but, on the other hand, members have often claimed the right of self-interpretation and have utilized this claim to refuse to comply with recommendations of United Nations organs.

2 and 3. The substitution in the Charter of the word 'essentially' for 'solely', indicating a quantitative rather than a logical distinction, and the omission of the reference to 'international law' were probably intended to make the

¹⁴ Tunis Nationality Decrees Case, P.C.I.J., Ser. B., No. 4, p. 24 (1923), Hudson, *World Court Reports*, vol. 1, p. 156. See also *Bulgaria, Hungary, Rumania Peace Treaties case*, I.C.J. Reports, 1950, p. 71, *American Journal of International Law*, Oct. 1950, vol. 44, p. 745; *Rep.*, vol. 1, p. 128, art. 2 (7), sec. 335. See also below, notes 38, 39.

provision more flexible, more comprehensive, and more political. The effect, however, has been to make the provision less precise, to encourage the organs of the United Nations to decide in favour of their own competence, to encourage members affected by a resolution to deny this competence, and to discourage applications to the World Court for advisory opinion on the subject.

4. The more general applicability of the provision to activities of the United Nations made necessary the remaining differences.

Although, according to article 2 (7) '*nothing contained in the present Charter authorizes the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state,*' it is clear that the interpretation and application of Charter provisions which impose obligations upon the members¹⁵ are not within their domestic jurisdiction. Thus such provisions may in fact extend the competence of United Nations organs to matters which would otherwise have been within the domestic jurisdiction of a state. In view of article 103, asserting the priority of the Charter over other treaties, it cannot be held that a Charter obligation is less valid than the obligation of any other treaty.¹⁶

5. Many articles of the Charter grant discretionary powers¹⁷ or impose duties or responsibilities¹⁸ upon organs

¹⁵ Arts. 2, 25, 33 (1), 37 (1), 43, 45, 48, 49, 56, 73, 94 (1). It has been suggested that some of these articles, particularly arts. 56 and 73 impose 'political' rather than 'legal' obligations upon the members, that such obligations have only a moral sanction and are subject to self-interpretation and application, and so do not qualify the states jurisdiction. Consequently, it is said, matters involving only such obligations remain within the states' domestic jurisdiction. This interpretation led the Supreme Court of California to hold that article 56 of the Charter is 'non-self-executing' in the Fujii Case (notes 46, 47 and secs. 7 and 8 below). It is clear, however, that the United Nations can make 'political' decisions on some matters, such as when hostilities threaten international peace and security and that the obligations of states in respect to these matters are not within their domestic jurisdiction. (See Chap. IV., sec. 1 below.)

¹⁶ *Rep.*, vol. 1, p. 143, art. 2 (7), secs. 407-11.

¹⁷ Arts. 10, 11, 14, 34, 36 (1), 37 (2), 40, 41, 42, 62.

¹⁸ Arts. 13, 24, 33 (2), 36 (2,3), 39, 44, 55.

of the United Nations. If the domestic jurisdiction clause had only prohibited intervention by the United Nations in matters of domestic jurisdiction, it would have qualified the application of these articles, but the duty of members to submit all serious disputes not otherwise settled to the United Nations¹⁹ would have continued. It was thought desirable to emphasize that this duty does not exist in respect to domestic disputes which do not threaten international peace and security.

6. If the exception concerning enforcement measures had not been included, the domestic jurisdiction limitation might have prevented the application of such measures, because they would often involve intervention by the United Nations in the domestic jurisdiction of a state.

4. *Domestic Jurisdiction and Intervention*

Since the domestic jurisdiction provision in the Covenant and in the Dumbarton Oaks proposals applied only to resolutions dealing with disputes or situations it was not necessary to consider the relevance of the clause to other kinds of action. It was assumed for example in the League of Nations that mediatorial action to prevent war under Article XI of the Covenant and recommendations concerning social and economic matters (Article XXIII), reduction of armaments (Article VIII), the application of sanctions (Article XVI), and the review of treaties (Article XIX) were not limited by any considerations of domestic jurisdiction. Such limitation may have been considered unnecessary because in these matters the organs of the League of Nations could only act by unanimity. In the United Nations, however, such unanimity is not generally required, and furthermore the scope of recommendatory action in fields which

¹⁹ Art. 37 (1). In fact this article requires submission only of a dispute 'the continuance of which is likely to endanger the maintenance of international peace and security' (Art. 33, 1), and this obligation would appear to continue irrespective of art. 2 (7) because of the general obligation of members under art. 2 (3) as well as under the obligation of article 37 (1) itself.

states have usually regarded as within their domestic jurisdiction appears to be much broader. If however, such recommendations were entirely forbidden, the claim of domestic jurisdiction might prevent United Nations' action in these field altogether. Consequently, the term 'intervention' was introduced.

According to international law, 'intervention' means dictatorial interference by a state in the internal affairs of another state or in the relations between other states.²⁰ Tenders of good offices, representations seeking information or co-operation, and protests against breaches of international law do not constitute intervention. Intervention may, however, be diplomatic as well as military. A diplomatic communication of peremptory or threatening tone, implying possible use of military or other coercive measures, may constitute intervention.²¹

The United Nations as such is authorized to intervene in this sense only if the Security Council decides upon enforcement measures under Chapter VII of the Charter, but such intervention, even through affecting the domestic jurisdiction of the state against which the measures are taken, is expressly permitted by the last clause in Article 2 (7).

The Charter permits the Security Council to 'call upon' members or to 'utilize' regional agencies to preserve international peace and security²²; permits the General Assembly and the Security Council to 'recommend' action by members to carry out the purposes and principles of the Charter²³ and permits the Economic and Social Council and the Trusteeship Council, within the scope of their functions,

²⁰ L. Oppenheim, *International Law* (Lauterpacht), 7th ed., vol. 1, sec. 134 who suggests the term 'intercession' when the interference is not dictatorial; Charles Cheney Hyde, *International Law*, 2nd ed., Boston, Little Brown, 1945, p. 245 ff.; George Grafton Wilson, *Handbook of International Law*, 3rd ed., St. Paul, West, 1939, p. 58 ff.

²¹ Intervention in necessary defence, to secure reparation for legal injuries, to protect rights of nationals abroad, to end illegal behavior, in pursuance of treaty permissions, or with other legal justification is sometimes called 'interposition'. Ellery C. Stowell, *Intervention in International Law*, Washington, Byrne, 1921 pp. 1 ff.

²² Arts. 33, 40, 41, 53.

²³ Arts. 10, 11, 14, 36, 37, 38, 39.

to make 'recommendations' to members.²⁴ Such resolutions, while they might in some instances urge 'intervention' in the affairs of a state by members or regional agencies, would not usually constitute intervention by the United Nations itself. To place a matter on the agenda, to discuss it, to study it, or to pass a general resolution on principles would clearly not be to intervene.²⁵ It thus appears that few otherwise permissible activities of United Nations organs are subject to the limitations of Article 2 (7). In practice, however, United Nations organs have hesitated, perhaps with excess of caution, to address a recommendation to a particular state unless the recommendation involved that state's international obligations and, therefore, was not within its domestic jurisdiction. They have usually preferred to address recommendations not involving such obligations to all members, letting each decide whom the cap fits.

Thus the issue of whether a resolution constitutes an 'intervention' has been treated as a matter of form, rather than of substance. Some members of the General Assembly, for example, thought a resolution addressed to the South African government, criticizing it for its *apartheid* policy, would constitute 'intervention' in that country's domestic jurisdiction, but approved a substitute resolution which, though referring in the preamble to racial conflict in South Africa resulting from the policy of *apartheid* of the government of the Union of South Africa, in its operative part condemned all governmental policies designed to perpetuate or increase discriminations as inconsistent with Article 56 of the Charter and 'solemnly called upon all member states to bring their policies into conformity with their obligations under the Charter to promote the observance of human rights and fundamental freedoms.' The resolution was addressed to all, but the General Assembly made it clear in the preamble whom it intended the cap to fit.²⁶

²⁴ Arts. 62, 85, 87. ²⁵ *Rep.* vol. 1, pp. 95, 99, 115, 131, art. 2 (7), secs. 174, 196, 274, 346 ff. Quincy Wright 'Is Discussion Intervention?' *American Journal of International Law*, Jan. 1956, vol. 50, p. 102 ff.

²⁶ *Rep.* vol. 1, pp. 97, 133, art. 2 (7), secs. 184-6, 360; U.N., Doc. A/P VII, 616 B, Dec. 5, 1952. See also Rudzinski, *op. cit.* p. 330.

United Nations organs have felt free to pass resolutions dealing with matters which are essentially within the domestic jurisdiction of a state so long as the resolution applies a principle and is formally addressed to all members or to all members of a particular class, such as members administering non-self-governing territories, and does not propose action against, or in the territory of a particular state. Such resolutions are generally conceded not to constitute 'intervention' by the United Nations. 'Action' by the Security Council²⁷ against a state or within its territory and, therefore, constituting 'intervention' in its domestic jurisdiction is expressly permitted if it constitutes an 'enforcement measure under Chapter VII'.²⁸

Other resolutions of the General Assembly have been addressed to a particular state, but in these cases the resolution has dealt with a definite international obligation of the state addressed and so has not been a matter within its domestic jurisdiction. This was true of resolutions concerning the refusal of the Soviet Union to permit departure from its territory of the Soviet wives of aliens, including the wife of the Chilean Ambassador's son;²⁹ concerning the suppression of civil and religious liberties guaranteed by the peace treaties in Bulgaria and Hungary;³⁰ and concerning the treatment of Indians in South Africa contrary to the requirements of agreements between that country and India.³¹

To summarize, Article 2 (7) does not prevent the organs of the United Nations from passing a resolution on matters within the domestic jurisdiction of a member provided the resolution is not in a form constituting 'intervention', or from passing a resolution in a form constituting 'intervention' provided it deals with international obligations of the state involved and so does not concern its domestic jurisdiction.

²⁷ Art. 11 (2). ²⁸ Art. 2 (7).

²⁹ *Rep.* vol. 1, p. 8, art. 23 (7), sec. 106, See also Benjamin V. Cohen, "Human Rights under the United Nations Charter", *Law and Contemporary Problems*, Summer, 1949, p. 434.

³⁰ *Rep.* vol. 1, p. 85, art. 2 (7), sec. 116.

³¹ *Rep.* vol. 1, p. 70, art. 2 (7), secs. 48, 49.

The prohibition of Article 2 (7) applies, therefore, only to a resolution of a United Nations organ which is both an 'intervention' and on a matter within the domestic jurisdiction of a state. It may be added that since protests against breaches of international law are usually excluded from the concept of 'intervention', a United Nations resolution of this character would be neither an intervention nor a matter of domestic jurisdiction.

5. *Domestic Jurisdiction and International Law*

Apparently the drafters of Article 2 (7) conceived of a general category of domestic questions, defined either geographically as matters taking place within the territory of a state, personally as matters concerning individuals within the jurisdiction of a state, functionally as matters which could be dealt with conveniently and efficiently by states individually, or politically as matters which could be dealt with by states individually without affecting the interests of others. These matters were distinguished from international questions concerning relations between states or governments or matters which could be dealt with only by agreement of states. In proposing the draft prepared by the sponsoring powers at San Francisco, Mr. John Foster Dulles said it was intended to require the organization in carrying out its economic and social objects to deal with governments instead of 'penetrating directly into the domestic life and social economy of the member-states'.³² A little reflection, however, indicates that such a distinction is meaningless in the general framework of the Charter. The United Nations can in general act upon its members only by addressing resolutions to them. Thus so far as physical penetration into the domestic life of a state was concerned, there was no need for a domestic jurisdiction article, unless indeed it was intended to prevent members from making treaties permitting United Nations organs to act within their territories for the purpose of protecting human rights, punishing international crimes, or otherwise dealing directly with individuals.

³² UNCIO, June 14, 1945, vol. 6, p. 507.

Such a limitation upon the sovereign right of states to make treaties could hardly have been intended and certainly could not be deduced from Article 2 (7), which refers only to intervention by the United Nations and to submissions of controversies by members to the United Nations.³³

It is of course true that enforcement measures taken by the United Nations may penetrate into the territory of a state and deal with individuals under its jurisdiction directly, but such measures are explicitly excepted from Article 2 (7). It is also true that the Trusteeship Council can establish direct relations with individuals in trust territories by receiving petitions from them and visiting such territories³⁴ although the information obtained can result only in recommendations to the administering state. Furthermore, the Security Council and the General Assembly can establish such direct relations by sending investigating committees into the territory of a state,³⁵ but such action has usually been taken only with consent of that state, and again the information obtained can result only in recommendation to states. The Secretary General and other organs can, of course, deal directly with the staff at headquarters and elsewhere³⁶ and can negotiate with the governments of members personally or through missions.^{36a} These procedures and immunities are explicitly or implicitly provided for and have not been considered barred by the domestic jurisdiction provision.

But while United Nations agencies can not penetrate physically into the territory of a state without its consent manifested either in the Charter or in some other international agreement, in the economic and social field the subject matter of a United Nations resolution inevitably concerns the action of individuals, or the action of governments within their territories or with respect to individuals under their jurisdiction. Thus if 'matters which are essentially within the domestic jurisdiction of any state' include

³³ Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations, Commentary and Documents*, Revised Edition, Boston. World Peace Foundation, 1949, p. 111 ff. ³⁴ Art. 87. ³⁵ Art. 34.

³⁶ Art. 100. ^{36a} Arts. 97-9.

resolutions of this type, Article 2 (7) would seriously impair the capacity of the United Nations to function in this field. United Nations organs have, therefore, declined to define any general categories of domestic questions but have applied the term, as did the League of Nations, to the legal discretion of a state in a particular situation. They have assumed that a sovereign state may regard any action whatever as within its domestic jurisdiction, except in so far as it is under international obligations not to exercise its jurisdiction, to exercise its jurisdiction in a particular way, or to permit some other entity to exercise jurisdiction. 'All that can be required of a state,' said the Permanent Court of International Justice in the case of the *Lotus*, 'is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.'³⁷

Since the presence or absence of an international obligation is the critical question in determining whether a matter is domestic, the issue is necessarily one of international law. The Permanent Court of International Justice interpreted Article 15 (8) of the Covenant in the *Tunis-Morocco Nationality Decrees Case* in this sense:

The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question, it depends upon the development of international relations . . . It may well happen that in a matter which . . . is not, in principle, regulated by international law, the right of a state to use its discretion is nevertheless restricted by obligations which it may have undertaken toward other states.³⁸

In spite of the different qualification of the term in Article 2 (7) of the Charter, the opinion of the International Court of Justice expressed in the *Cardinal Mindszenty case* was the same. To the contention that the United Nations General Assembly and the Court could not consider the procedure

³⁷ *The Lotus*, P.C.I.J., 1927, Ser. A. no. 10, p. 18, Hudson, *World Court Reports*, vol. 2, p. 35. ³⁸ See Note 14 above.

for determining treaty obligations of Bulgaria, Hungary and Roumania concerning human rights because the matter was essentially within the domestic jurisdiction of these states, the Court said 'the interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a state. It is a question of international law which, by its very nature, lies within the competence of the court.'³⁹

The conclusion that Article 2 (7) can only be interpreted by determining whether or not in dealing with a dispute, situation, or problem a state is under obligations of international law is reinforced by considering the relation of this clause to paragraphs 1 and 2 of Article 2. These clauses declare :

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

These provisions assert that the Organization and the members are both under obligations established by the subsequent paragraphs, that the Organization is bound to recognize the sovereign equality of its members, and that the members are bound to carry out their obligations in good faith. The concept of sovereignty and equality, limited by international obligations is a concept of international law and implies that a sovereign state is free to act at discretion except in so far as it is bound by international obligations. Article 2 (7) states the same thing in different terms. The United Nations, is bound not to intervene in the domestic jurisdiction of states, but resolutions to assure the fulfilment of their international obligations by the members is within

³⁹ See Note 14 above.

the competence of United Nations organs and is not a matter of domestic jurisdiction.⁴⁰

Domestic jurisdiction is therefore the residuum of sovereignty remaining outside of a state's international obligations. The sphere of domestic jurisdiction cannot be determined directly, but only indirectly through ascertaining the international obligations applicable in a given situation. The United Nations cannot make recommendations to a state concerning matters within the states' domestic jurisdiction, but it can make recommendations concerning the fulfilment of the states' international obligations. This interpretation is essential if international law is to be regarded as a genuine law the essence of which is that a subject cannot ultimately determine its own legal obligations.^{40a} This is the distinction between *legal* and *moral* obligations, and the entire United Nations is based on the supposition that states are bound by international law.^{40b} The Preamble in fact states, that one of its purposes is 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.'

As the statement in Article 38 of the Statute of the International Court of Justice indicates, international obligations flow not only from treaties to which the state is a party, including the Charter itself, but also from general international law established by custom, general principles of law, and the authority of courts and textwriters. All of these sources must be examined to determine whether in a given situation a state is under international obligations. While this might be done more accurately by a judicial organ, such as the International Court of Justice, the standard must be the same even if the interpretation is by a political organ such as the General Assembly or one of the Councils of the United Nations.

⁴⁰ Hersh Lauterpacht, *International Law and Human Rights*, London, Stevens, 1950, p. 177.

^{40a} Georg Schwargenberger, *International Law as applied by International Tribunals* (London, Stevens, 1945) p. 45; Q. Wright, *Recognition and Self Determination*, Proc. Am. Soc. Int. Law, 1954, p. 29.

^{40b} See Note 15 above.

It is to be observed that the line between the authority of the United Nations and of its members is not drawn by detailed specification of power either of the central organ or of the member-states as is ordinarily done in the constitutions of federations or confederations, but through the application of the general principle of international law that determination of a state's obligations under international laws is an international and not a domestic question. The organs of the United Nations have general power to make recommendations to the members concerning the fulfilment of their international obligations in so far as these obligations come within the general scope of the Charter. The line between international and domestic questions is, therefore, not fixed by the terms of the Charter but develops through the activity of states in making treaties and otherwise assuming international obligations. The United Nations has no legislative powers, but it may contribute to the progress of international legislation by initiating conferences, drafting treaties, and stimulating their ratification. It is believed that this mode of defining the competence of the United Nations organs is adapted to the decentralized character of the family of nations in which the sovereignty and independence of states should not be invaded by the activity of international organs except in so far as the states themselves have assumed international obligations. By entering into international obligations states consent to receive, if members of the United Nations, recommendations of its organs concerning fulfilment of those obligations.

It is not therefore possible to define a particular state's domestic jurisdiction without considering all of its treaties and other international commitments. It is not proposed here to consider such commitments except certain of those which have been undertaken by states in ratifying the Charter itself. What obligations have been undertaken by the members in ratifying the Charter? The problem has been controversial, particularly in the fields of disputes and situations threatening or breaching the peace, of social and economic policy, of human rights, and of the status and administration of non-self-governing territories.

6. *The Maintenance of International Peace and Security*

In the political and military field members of the United Nations have assumed obligations concerning collective security and pacific settlement. As Security Council action under Chapter VII is expressly excepted from Article 2 (7) and as the subject of collective security will be considered fully in the next chapter, the matter will here be considered very briefly. Members assume explicit obligations to settle international disputes peacefully⁴¹ to permit investigation by the Security Council of any dispute not so settled⁴² and, if continuance of the dispute or situation is found to endanger the maintenance of international peace and security, to refer it to the Security Council or the General Assembly.⁴³ It would appear that the line determining whether a dispute or situation is within the competence of a United Nations organ depends on whether international peace and security is endangered. Hostilities between two factions within a state, as in Korea, or between a colony and a mother country, as in Dutch Indonesia, were considered threats to international peace and security if not actual breaches of international peace and therefore not within the domestic jurisdiction of these countries.⁴⁴ Reference in Articles 2 (3) and 33 to 'international peace and security' and in Article 2 (4) to 'international relations' does not prevent the United Nations organs from dealing with insurrections or hostilities within a state, if of such magnitude and so disturbing to surrounding states that international peace is actually threatened. Such disturbance can be assumed if an internationally accepted military or juridical boundary is violated, as was the case in Korea, or as would be the case if Formosa were attacked from mainland China. In the case of civil strife, therefore, the international obligations of states, and, conversely, their domestic jurisdiction, depend

⁴¹ Art. 2 (3). ⁴² Art. 34. ⁴³ Arts. 35, 37 (1).

⁴⁴ On Indonesia, *Rep.* vol. 1, p. 117, art. 2 (7), secs. 284, 289, 298, 304, 305, 447; vol. 2, pp. 338, 341, 345, art. 39, secs. 16, 23, 34; on Korea, *Rep.* vol. 2, pp. 342, 351, art. 39; secs. 21, 50, 52; General, *Rep.* vol. 2, p. 346, art. 39, sec. 36.

upon the magnitude and probable effects of internal disturbances. Under the Charter, states accept the obligation to prevent disturbance or other conditions from developing within their territory threatening the peace and security of neighbouring states, or threatening the continuance of international settlements. Decision on whether a state is fulfilling the obligation is clearly an international function but it depends necessarily on a political judgment and should, therefore, be made by a political organ of the United Nations rather than by the Court and request for advisory opinion would not usually be in order.

7. *Human Rights and Social Welfare*

According to Article 56 of the Charter 'all members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.' These purposes are very extensive, including 'respect for the principle of equal rights and self-determination of peoples' and promotion of 'higher standards of living, full employment, conditions of economic and social progress and development; solution of international economic, social, health and related problems; international, cultural and educational co-operation; and universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion.' Does the 'pledge' of Article 56 imply an acceptance of international obligations in respect to all of these matters? Undoubtedly the term 'pledge' does imply some obligation, but it is an obligation only 'to take joint and separate action in co-operation with the Organization.' One interpretation would hold that 'separate action' by a state, if clearly hostile to these purposes, would be a breach of its international obligation. This interpretation provided one of the justifications for the resolution of the General Assembly in April, 1949, recommending that the Soviet government permit the wives of foreign diplomats and other persons to leave the country. This resolution was apparently considered permissible under Article 2 (7) only

because Soviet behaviour was in violation of its obligations, established in the case of the wives of diplomats by customary international law and in the case of other persons by the human rights provisions of the Charter.⁴⁵ Another interpretation would hold only that failure to co-operate with the United Nations would be a breach of obligation and that that is a political rather than a legal obligation.

A lower court of California held in the Fujii case that maintenance of the act forbidding Japanese landownership in California was a breach of this article, thus supporting the first interpretation⁴⁶ but the Supreme Court of California did not pass on this issue, holding that Article 56 of the Charter was of a political character, was not 'self-executing', and could not be applied by national courts until implemented by further action.⁴⁷ Members of the United Nations International Law Commission were divided in 1949 on the scope and character of obligations under the Charter in respect to human rights⁴⁸. It has already been noted that the General Assembly of the United Nations hesitated to declare that enforcement of the *apartheid* act in South Africa was a breach of South African obligations, although it did not hesitate to make a general recommendation to all members concerning racial discriminatory legislation.⁴⁹

The tendency has been to assume that the obligations accepted by members in the fields of human rights and of economic and social progress are limited.⁵⁰ Consequently these fields remain largely within the domestic jurisdiction

⁴⁵ *Rep.* vol. 1, p. 82, art. 2 (7), secs. 105, 106.

⁴⁶ *Fujii vs. California*, 217 Pacific 2nd. 481; 218 Pacific 2nd. 595, 1950; Quincy Wright 'National Courts and Human Rights—the Fujii Case', *Am. Journ. Int. Law*, Jan. 1951, vol. 45, pp. 62 ff.

⁴⁷ 242 Pacific 2nd. 617, 1952.

⁴⁸ H. Lauterpacht, *International Law and Human Rights*, *cit.*, p. 154.

⁴⁹ *Rep.* vol. 3, p. 117, art. 56, sec. 15. See also above note 26.

⁵⁰ *Rep.* vol. 3, pp. 116–17. Judge Lauterpacht, however, writes 'inasmuch as the question of the observance of fundamental human rights and freedoms is a basic legal obligation of Members of the United Nations and, particularly, inasmuch as it may become a matter of international concern in the sense indicated, it is outside the reservation of Article 2, paragraph 7.' *op. cit.* p. 214.

of members. The activities of United Nations organs have, therefore, been in the main confined to general resolutions not constituting 'intervention'; encouraging the members to develop their own legislation in the direction indicated by United Nations purposes and to assume more extensive and precise international obligations through such instruments as the proposed Covenants of Human Rights, the Genocide Convention, and the Constitution and agreements of the Specialized Agencies. As such obligations are assumed, the ratifying states narrow their domestic jurisdiction in the field and open the way for more positive action by United Nations organs in criticizing failures to live up to such obligations.

8. *Non Self-Governing Territories*

According to Article 73 of the Charter, 'members of the United Nations which have or assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.' Specific obligations are then enumerated, including the political, economic, social, and educational advancement of these peoples and their protection from abuses, the development of self-government, the furthering of international peace and security, the promotion of constructive measures of development, and the transmission of certain information relating to economic, social and educational conditions in the territories.

The use of the term 'obligation' indicates that these states have accepted international obligations and thus the way is opened for organs of the United Nations to interpret these obligations and to criticize members who fail to fulfil them.⁵¹ Much discussion in the General Assembly has

⁵¹ *Rep.* vol. 1, pp. 76, 147, art. 2 (7), secs. 80, 426.

concerned the nature of the information to be submitted under paragraph (e) of this article. The administering authorities have generally denied an obligation to submit information of a political character.⁵² It seems clear, however, wholly apart from this specific obligation to submit some types of information, that members of the United Nations are under an international obligation to carry out all the clauses of the article, including the development of self-government. The General Assembly is therefore competent to formulate general standards for estimating progress toward self-government and the other objectives set forth, as has indeed been done by the resolution of December, 1953 concerning 'factors', giving evidence of progress toward self-government.⁵³ The General Assembly may also recognize which territories administered by members are non-self-governing, and which have become self-governing or independent, as was done by the General Assembly of 1953 in the cases of Puerto Rico and Greenland.⁵⁴ Even more than this, it would appear that the General Assembly is competent to address resolutions to a particular administering authority criticizing its failure to live up to the obligations which it has accepted in Article 73. The General Assembly has assumed that the references to 'self-government' or 'independence' in Articles 73 and 76, and to 'self-determination' in Articles 1 (2) and 55, require members administering colonies, protectorates or trusteeships to promote the realization of the right of self-determination of the peoples of these territories.⁵⁵

Apart from the obligations assumed in the Charter, states which administer territories under instruments of protectorate, mandate or trusteeship are bound by further international obligations in those territories. The interpretation of the obligations of a state under such instruments of an

⁵² *Rep.* vol. 4, pp. 25 ff., art. 73, secs. 72, 74, 75.

⁵³ *Rep.* vol. 4, p. 77, art. 73, sec. 264.

⁵⁴ *Rep.* vol. 4, p. 67 ff., art. 73, secs. 253, 254.

⁵⁵ *Rep.* vol. 1, p. 105, art. 2 (7), secs. 224, 225. See also Quincy Wright, 'Recognition and Self-Determination', *Proceedings, American Society of International Law*, 1954, p. 23 ff.

international character cannot in the opinion of the World Court be regarded as within the domestic jurisdiction of the administering state.⁵⁶ Consequently the competence of the General Assembly to examine the degree in which South Africa is observing its mandate in South-west Africa, and the degree in which France observed its protectorate treaties with Morocco and Tunis, can hardly be questioned.⁵⁷

The distinction between such territories and territories within the sovereignty of a state was illustrated by the debate in the General Assembly in 1955 on the Algerian situation. France insisted that, as part of Metropolitan France under French legislation, Algeria differed from Tunis and Morocco and that the action to be taken in dealing with the disturbed situation in that territory was within its domestic jurisdiction. The Arab-Asian group, however, pressed for consideration of the situation by the General Assembly, though less on the ground that the Algerians were entitled to the guarantees of Article 73 or the right of self-determination, than on the ground that the situation threatened the peace of the Mediterranean basin and deprived Algerians of human rights. In any case this group insisted that the United Nations would not be 'intervening' if the General Assembly put the matter on its Agenda and, thus, opened to discussion the question of whether these problems were within the domestic jurisdiction of France. This opinion prevailed and France withdrew its delegation from the General Assembly. Some weeks later, as a political compromise on other issues, the Algerian question was withdrawn from the agenda without prejudice to the legal contentions, and the French delegation returned. Besides establishing the legal difference in the situation of Algeria and the

⁵⁶ *Tunis Nationality Decrees Case*, *cit.* above note 14; *South West Africa Case*, *I.C.J.*, Reports, 1950, pp. 143-5, *Rep.* vol. 4, p. 166, art. 77, sec. 28.

⁵⁷ On Southwest Africa, *Rep.* vol. 4, pp. 163 ff.; on Morocco, *Rep.* vol. 1, p. 90, art. 2 (7), secs. 146, 147; on Tunisia, *Rep.* vol. 1, pp. 91-4, art. 2 (7), secs. 152, 160, 162, 167. France accorded independence to Morocco and Tunisia in 1956 and the Security Council recommended their admittance to the United Nations.

protectorates, the episode confirmed the position of the General Assembly that discussion is not intervention.⁵⁸

9. *Domestic Jurisdiction and Charter Review*

The resolutions passed by United Nations organs indicate that the domestic jurisdiction clause has been liberally interpreted, has evolved, and has not hampered the capacity of the United Nations to deal with problems of hostilities threatening the peace, of economic and social progress, of human rights, and of self-determination of peoples. The main difficulty of the article arises from its ambiguity. This has made it possible for particular states to object to interpretations given by United Nations organs and, therefore, to find an excuse for refusing to accept their recommendations. It has been suggested in some quarters that clarification of the article, particularly by reference to international law and establishment of the International Court of Justice as the appropriate organ to determine the competence of the United Nations organs in particular instances, would be desirable. Such a procedure would probably tend to strengthen claims of domestic jurisdiction and to present a greater barrier to United Nations action than exists under present circumstances. It may be that in the fluid state of international relations during the first years of the United Nations the ambiguity of the article and its application by political bodies has made it more possible for the United Nations to adapt itself to a continually changing situation. But it would seem that a dozen years experience and the need of greater stability would justify a practice of requesting an advisory opinion of the Court on claims of domestic jurisdiction unless the competence of United Nations organs to act for the preservation of peace, clearly a political matter, is questioned.⁵⁹

⁵⁸ Quincy Wright, 'Is Discussion Intervention?', *op. cit.* above note 25.

⁵⁹ C.S.O.P. 10th Rep. *Strengthening the United Nations* (New York, Harper, 1957), pp. 5, 34.

Debate on the subject, juristic writing, and a gradual clarification of the meaning of domestic jurisdiction by opinions of the Court are the most adequate means for preventing action by United Nations organs which would dangerously encroach upon the domestic jurisdiction of members. The presence of the article has served to warn these organs of the impropriety of attempting action amounting to 'intervention' to develop the purposes of the United Nations, except where states are bound by international obligations. So long as the United Nations lacks effective force, it must depend upon the good faith of states, and good faith does not apply except where states are bound by international obligations.

CHAPTER IV

THE PREVENTION OF AGGRESSION

1. *Persuasion and Coercion*

THE United Nations functions in the main by persuasion rather than by coercion. The persuasive influences of its resolutions are powerful in proportion as they have the opinion of governments and peoples behind them, but the mobilization of such an opinion depends in no small degree upon the conviction of all the members that resolutions are within the competence of United Nations organs. That competence is measured by the concept of domestic jurisdiction. The sentiment of nationalism is such that if many states believe a resolution directed toward a particular state constitutes an intervention in matters which are essentially within its domestic jurisdiction, the state addressed and other states may so resent the resolution that its effect, far from mobilizing world public opinion, will tend to disintegrate the United Nations. From a practical as well as a juridical point of view it is therefore important, as pointed out in the last chapter, that the conception of domestic jurisdiction should be clarified. Political interpretations involving much uncertainty may have been necessary during the formative period of the United Nations in order to prevent premature commitment to a rigid definition, inconsistent with the basic principles and purposes of the Charter in regard to such novel conceptions as human rights and self-determination of peoples and to a programme of social and economic progress and pacific settlement of disputes. It is believed desirable, however that in the future Article 2(7) of the Charter be generally applied by recourse to the Court. Only when the competence of the General Assembly and other organs of the United Nations, are clearly established by law can these organs act with assurance in the mobilization of world

opinion for the solution of matters of accepted international concern.

With this end in view, it has been suggested that the domestic jurisdiction of a state be defined as its competence to exercise governmental power through its own organs, for the solution of any situation, conflict or dispute in so far as no obligation of general international law or treaty affects the scope or manner of such exercise. Furthermore, intervention by the United Nations should be defined to include not only coercive measures undertaken by decision of the Security Council under Chapter VII, but also resolutions of any organ addressed to a state, criticizing its domestic conduct and recommending changes, or resolutions recommending action by members against a state or in its territory. Putting these two definitions together, all organs of the United Nations are prohibited under Article 2 (7), from addressing resolutions to, or concerning, a particular state, critical of its behaviour or mobilizing action against it, except in reference to its international obligations or consequent upon their breach.

The problem of maintaining international peace and security is, under this definition, outside the domestic jurisdiction of any state because of the general principle of international law obliging each sovereign state to refrain from exercising jurisdiction over another, and because of the specific obligations which states have undertaken in the Kellogg-Briand Pact, the Charter, and other treaties outlawing war and imposing severe restrictions upon threat or use of force in international relations, but judgment on whether hostilities within a state threaten international peace and security and are not, therefore, within the state's 'domestic jurisdiction' is of political rather than legal character. Correlative with the exclusion of this field from the domestic jurisdiction of states, the United Nations is given comprehensive jurisdiction. In this field alone does the United Nations have, not merely persuasive, but also coercive power.

Utilization of such power has, however, been infrequent. Article 39 of the Charter, authorizing the Security Council

to determine threats to the peace, breaches of the peace, and acts of aggression, was alluded to by organs of the United Nations in the Spanish, Greek frontier, Berlin blockade, and Guatemalan cases, but has been definitely invoked by the Security Council only in the Indonesian, Palestine, and Korean cases.¹ Action of members to suppress aggression was called for by the Security Council only in the latter case.² The General Assembly recommended action against the Franco government in Spain because of its aid to the Axis powers in World War II³ and against the Communist government of China because of aggression in Korea.⁴ It declared the Soviet Union an aggressor in Hungary in 1956.^{4a}

The capacity of the United Nations as such to exercise its coercive powers effectively depends on the conclusion of agreements by the Security Council with members, making military forces, bases, and other facilities available to the Security Council,⁵ and on the development of procedures permitting the Security Council rapidly to decide upon provisional measures to stop hostilities, to determine the aggressor if necessary, and to suppress its hostilities.⁶ It is clear that such agreements and procedures are not likely to be made until the atmosphere of world opinion, and the political relations among the great powers, have greatly changed. Efforts to realize this organization of coercive force through the Military Staff Committee, were frustrated by continuous vetoes in the Security Council and have been abandoned since the first two years of the United Nations.⁷

¹ *Repertory of Practice of United Nations Organs*, United Nations, New York, 1956, *Rep.*, vol. 2, pp. 334 ff., 338 ff.

² *Rep.*, vol. 2, pp. 351 ff. ³ *Rep.*, vol. 1, p. 362.

⁴ *Rep.*, vol. 1, p. 373.

^{4a} Q. Wright, 'Intervention, 1956', *American Journal of International Law*, April 1957, vol. 51, p. 260.

⁵ Charter, arts. 43, 45.

⁶ Charter, arts. 39, 40, 41, 42.

⁷ *Rep.*, vol. 2, pp. 393 ff. See text of Military Staff Committee's 'Report on General Principles Governing the Organization of Armed Forces Made Available to the Security Council by Member Nations,' *Rep.*, vol. 2, pp. 396 ff.

Short of such action by the United Nations itself, however, the United Nations can indirectly exert coercive power to deal with breaches of the peace and aggression, by recommendations proposing and co-ordinating action by its members. The Security Council or, if that body is unable to function, the General Assembly, is competent to make such recommendations which will be effective in proportion as there is a high probability that in a crisis members of the United Nations with predominant military, political, and economic power in the world, will respond to the recommendation. The probability that a given state will so respond depends on its conviction, in a particular instance, that the government designated as the aggressor is so threatening that its suppression constitutes a major national interest.

In such an emergency each state is likely to appraise its national interest from two points of view. First from a juridical point of view, each will appraise its interest in maintaining the law which prohibits aggression as a continuing deterrent against potential aggressors and so, a protection for all. Grotius, confident of the rationality of states, thought this appraisal might be high, because the law of nations has in view the advantage of all states and each would appreciate that 'the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace'.⁸ Second, each will appraise the United Nations' recommendation from the political point of view, weighing immediate risks and costs to itself of military action to stop the aggressor, against the more distant danger, assuming it is not the immediate victim of the aggression, that the particular aggressor if not stopped will presently turn upon it with increased power. This point of view follows Lord Bacon's rule: 'that princes do keep sentinel that none of their neighbours do overgrow so . . . as they become more able to annoy them than they were'.⁹

⁸ Hugo Grotius, *De Jure Belli ac Pacis* (1625), 'Prolegomena', secs. 17, 18.

⁹ Francis Bacon, *Essays on Counsels, Civil and Moral* (1625), No. 19, 'Of Empire'.

2. *Collective Security and the Balance of Power*

Consideration of these two points of view suggests the close relationship between collective security and balance-of-power policies. The first attempts to insure, by pre-commitment, common action against any aggressor so as to deter all aggression; while the latter assumes that in the presence of actual or threatened aggression many states will gang up against the actual or potential aggressor in self-interest. Collective security defines the aggressor qualitatively by the illegal character of its acts, in the hope that future aggressions will be deterred because of the disposition of states to enforce the law. Balance-of-power policy defines the aggressor quantitatively by the excessive power at its disposal, with the expectation that many states will join in its suppression on the assumption that the state with excessive power will seek to expand at the expense of others. Both relate the security of each state to the stability of the entire system, but collective security seeks stability through general observance of law, while balance of power politics seeks it through the curbing of excessive power. Utilization of both methods at the same time, while desirable, presents difficulties because a weak state may be guilty of aggression, or, and this is the serious problem, a state may become dangerously powerful through internal development without committing an aggression. It may be a potential aggressor before it is an actual aggressor. This difficulty, however, which was observed by most of the early text writers on international law,¹⁰ may be more theoretical than actual. As Vattel pointed out, all states are justified in organizing their forces for defence against a potential aggressor, but should not actually use those forces until an aggression has occurred, but he thought this would soon happen because 'the will to oppress can almost always be believed to exist where there is found the power to do so with impunity'.¹¹

¹⁰ Quincy Wright, *Problems of Stability and Progress in International Relations*, University of California Press, 1954, pp. 68 ff.

¹¹ Emerich de Vattel, *Le Droit des Gens*, (1758), III, Chap. 3, pars. 44, 49.

United Nations recommendations, observing this principle, have distinguished between 'threat to the peace' and 'breach of the peace', and have not in practice attempted to designate the aggressor until the latter has occurred.

The juridical problem is to develop a definition of aggression, such that most of the members of the United Nations will always be convinced that a government to whom the definition applies has been guilty of acts which they ought to condemn, and also that it is so dangerous to the vital interests of each that they will immediately join in action to suppress it. In other words, collective security will work if a government is never designated an aggressor unless its acts and its condition are such that most of the members of the community of nations will regard it as both a law-breaker and a political menace.

3. *The Importance of Defining Aggression*

Can a definition of aggression be developed that will meet both of these requirements? Some think a precise definition is impossible or even dangerous. Such a definition might make it easy, Secretary of State Kellogg feared, 'for the unscrupulous to mould events' so that he will escape liability under the definition.¹² It might, said Sir Austin Chamberlain, be 'a trap for the innocent and a signpost for the guilty.'¹³ Thus it is argued wide discretion must be given an appropriate authority to determine the aggressor in the light of the total situation at the moment.

If the solidarity of the great powers and their will to prevent war had continued, as it was hoped it would at the San Francisco Conference, the vague terms of the Charter

¹² Note, 23 June 1928, *Treaty for Renunciation of War*, Texts, United States Government Printing Office, 1933, p. 57. See also discussion in 9th General Assembly, October, 1954. *International Organization*, February 1955, vol. 9, p. 148.

¹³ Quoted by Secretary Kellogg, Address to New York Council on Foreign Relations, March, 1928, *General Pact of Prevention of War*, United States Government Printing Office, 1928, p. 64. See also Quincy Wright, 'The Concept of Aggression in International Law', *American Journal of International Law* (A.J.), July, 1935, vol. 29, p. 386.

might have been adequate. The Charter requires members to refrain from 'threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the United Nations';¹⁴ requires the Security Council to determine the 'existence of any threat to the peace, breach of the peace, or act of aggression';¹⁵ and states the purpose of the United Nations 'to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace'.¹⁶

The broad discretion given the Security Council by these clauses, together with the obligation of all members to observe its decisions under Articles 25 and 48, might have been applied with sufficient political wisdom to prevent war if the great powers had preserved their unity. But in such circumstances there would have been grave danger to the liberty of smaller states. The attempt, often vain, to preserve peace by sacrificing small states to the demands of a potential aggressor, was a familiar expedient long before the notorious appeasement of Hitler at Munich in September 1938. As a slight qualification of the discretion of the Security Council, the word 'justice' was inserted in Articles 1 (1) and 2 (3) of the Charter, and resort to the International Court of Justice was urged in Article 36 (3).

However, unity of the great powers is not now a probability, and the hope of collective security depends, not on decisions of the Security Council, but on voluntary action of members in response to recommendations by the General Assembly, under the Uniting for Peace Resolution. A General Assembly resolution, determining the aggressor, is not likely to be made promptly, or to be observed if made, unless it implements a definition of the aggressor which is precise and acceptable to both the jural-consciousness and the practical interests of most of the members of the United Nations.

Because of the difficulty of formulating such a definition, some believe that the idea of collective security through the

¹⁴ Charter, art. 2 (4). ¹⁵ Art. 39. ¹⁶ Art. 1 (1).

United Nations is impracticable, and that states must depend for security on their capacity to defend themselves by their own arms; on collective self-defence commitments in regional or other alliances; or on the natural tendency of states to take action to restore the balance of power when serious aggressions occur. Those who share this point of view say the United Nations should devote itself to creating a more peaceful atmosphere by developing procedures and habits of voluntary pacific settlement and by stimulating international co-operation in economic, social, and humanitarian fields.¹⁷

As explained in the first chapter, the validity of this opinion seems doubtful. Inventions in the field of communication, transportation and military technology have so shrunk the world, augmenting the vulnerability of all peoples to devastating attack and at the same time increasing the identification of each people with its national symbols and ideologies, that many states, especially the great powers, cannot obtain even moderate security by the time-honoured methods of defensive armament, alliance, and equilibrating policy, at least without costs which will seriously impair their economic and social progress.

If states continue to rely for security upon these traditional methods, disputes are not likely to be settled by adjudication, negotiation or other peaceful methods if they concern claims which each thinks are vital to its power position, or to the power position of its allies or of a collective defence arrangement of which it is a party. Hopes for 'peaceful change', which usually implies relinquishment of claims which have this degree of importance for some state, particularly claims concerning territory, domestic jurisdiction, armaments, and alliances, prove illusory under conditions of power rivalry.^{17a}

Furthermore, progress in the social, economic and humanitarian work of the United Nations will be slow,

¹⁷ Percy, E. Corbett, 'Social Basis of a Law of Nations', *Academy of International Law, Recueil des Cours*, 1954, pp. 517 ff.

^{17a} Senator P. Bloomfield, *Evolution or Revolution: The United Nations and the Problem of Peaceful Territorial Change* (Harvard University Press, 1957).

unless sufficient confidence in collective security develops to permit reduction of armaments, devotion of larger proportions of national income to peaceful purposes, and acceptance of more extensive commitments to international co-operation for economic and social progress. Such commitments, implying a continuous reduction of the field of domestic jurisdiction, are certain to be resisted by states so long as each considers it a defensive necessity to retain complete discretion in the organization of its economy and the regimentation of its people.

For these reasons it is believed that effective collective security is essential for progress in pacific settlement and in international co-operation for economic, social, cultural, and humanitarian advancement. Collective security is, in fact, mentioned first in the Preamble and Article I of the Charter, and, as noticed, it is the only field in which the United Nations was designed to have coercive power. This is not to say that collective security can advance without progress in these other fields. The various purposes of the United Nations are interdependent, and advance in each is dependent on advance in the others. Laws and procedures for preventing war cannot be effective unless the atmosphere of world opinion and international politics become more favourable to peace. However, a suitable definition of aggression seems central in the entire work of the United Nations.

4. *Efforts to Define Aggression*

The concept of aggression, employed as a term of international politics and propaganda since earliest history, has been continuously and extensively discussed as a term of international law since establishment of the League of Nations in 1920. During the League period, it was considered by various committees in connection with the Geneva Protocol of 1924; in connection with security and arbitration treaties preparatory to the Disarmament Conference of 1932; in connection with the interpretation of Covenant

clauses concerning the prevention of war¹⁸ and the application of sanctions;¹⁹ and in connection with several disputes, particularly the Greco-Bulgarian frontier (1926), Manchuria (1931), and Ethiopia (1935). It was discussed in connection with the interpretation of the Kellogg-Briand Pact, in connection with non-aggression pacts negotiated by the Soviet Union with its neighbours, and the prosecution of individuals indicted after World War II for crimes against peace at Nuremberg and Tokyo. In the United Nations, the subject has been discussed by the International Law Commission in connection with a code of crimes against international peace and security, by this Commission and by special committees instructed by the General Assembly to define aggression, and by the Security Council and General Assembly itself in connection with disputes requiring interpretation of Article 39, of the Charter.

These discussions have indicated that different definitions are convenient according as the problem is that of preventing breaches of the peace, of restoring peace, of determining international responsibility for breaches of the peace, or of determining the criminal responsibility of individuals for crimes against peace.²⁰

During the League period attention was mainly focussed on the first two of these problems. The members of the League undertook 'to respect and preserve, as against external aggression, the territorial integrity and existing political independence of all members',²¹ and not 'to resort to war' until nine months had been devoted to efforts at pacific settlement.²² Furthermore, the members undertook to apply economic sanctions against a member that resorted to war in breach of its covenants and the League was authorized to 'take any action that may be deemed wise and effective to safeguard the peace of nations'.²³ The idea was advanced, especially in discussion of the Geneva Protocol of 1924, that refusal to arbitrate was an important criterion for determining the aggressor

¹⁸ Covenant, Art. 11. ¹⁹ Covenant, Art. 16.

²⁰ Quincy Wright, 'The Concept of Aggression', *op. cit.*, note 13.

²¹ Covenant, Art. 10. ²² Covenant, Art. 12. ²³ Covenant, Art. 11.

in case hostilities broke out. This idea was implicit in Article 12 as it had been in the Bryan peace treaties of 1913 which influenced this article of the Covenant. It was thought that general recognition of the concept that states were bound to utilize every available means of pacific settlement before resorting to forceful self-help would contribute to the prevention of war.

Thus for the purpose of preventing breaches of the peace, aggression was defined as any threat or use of force in a dispute or controversy before exhausting all available means of pacific settlement. The Kellogg-Briand Pact of 1928 went further and implied that any resort to war 'as an instrument of national policy' or use of any 'means' not 'pacific' for the 'settlement or solution' of any 'dispute or conflict' of whatever 'nature' or 'origin' would be aggression.

Closely related was the concept of 'provisional orders' which came to dominate League thinking in connection with the implementation of Article 11 of the Covenant. Peace might be preserved or restored, it was thought, by the immediate issuance of 'stop fight' or 'cease fire' orders by the Council. If all participants in the conflict accepted such orders the fighting would end. If one refused, it would brand itself as the aggressor and measures could promptly be taken against it. This procedure was followed in the Greco-Bulgarian frontier dispute of 1926, and in a half dozen subsequent incidents. It was developed in the 'Convention to improve the Means of Preventing War' opened for signatures in 1931. This Convention created a positive obligation of parties to observe such provisional orders. This method has the advantage that it involves no necessary branding of a state as an aggressor, but if the orders are not observed it provides a clear criterion for determining the aggressor, particularly if the Council is in a position to meet and to make decisions rapidly. A state which refuses to comply with such provisional orders is likely to be regarded not only as an aggressor but as dangerous by third states who will feel an immediate interest in acting to suppress it. This procedure proved effective in several cases in

League history, especially the Greco-Bulgarian affair of 1925, the Mosul affair of 1925, the Shanghai affair of 1932 and the Leticia affair of 1932.²⁴ Even in instances in which a great power was the aggressor, members of the League generally accepted its guilt thus determined, by overwhelming votes though they did not act with sufficient vigour to stop its activities. This was true in the Manchurian (1931) and Ethiopian cases (1935) in which Japan and Italy were found to be aggressors and also in the Chaco dispute (1928) in which Paraguay was eventually found guilty of aggression. The inability of the United States, not a member of the League, to co-operate in sanctions was a main factor in the League's failure to curb Japan and Italy, and the delay, incident to the initial effort of the American system to handle the Chaco situation, contributed to the League's failure there.²⁵

It is not surprising, therefore, that this method was provided for in the United Nations Charter. Article 40 authorizes the Security Council to 'call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable' and requires it to 'duly take account of failure to comply with such provisional measures.' The United Nations has restored peace by cease fire or other provisional recommendations in the Indonesian, Palestine, Greek frontier, Kashmir and Suez hostilities and the Geneva Conference of 1954 did so in the Vietnamese hostilities. United Nations Resolutions in the Middle Eastern situations of 1956 and 1958 contributed to the withdrawal of foreign forces.

Thus for the purpose of restoring peace, or terminating breaches of the peace aggression may be defined as refusal to comply with provisional orders of the Security Council or with recommendations of the General Assembly with that purpose.

²⁴ Quincy Wright, 'The Concept of Aggression', *op. cit.*, pp. 377, 389.

²⁵ Quincy Wright, 'The Test of Aggression in the Italo-Ethiopian War', A.J., Jan. 1936, vol. 30, pp. 45 ff.; *Ibid.*, 'Collective Rights and Duties for the Enforcement of Treaty Obligations', *Proceedings, American Society of International Law*, 1932, pp. 109 ff.

During the League period it was necessary in some cases to determine responsibility for breaches of the peace after they had been stopped, or even while they were in progress. In such cases, use was made of investigating committees which assembled evidence concerning priority in initiating hostilities, aggressive intentions, and superiority of preparation for attack, as evidences of the aggressor.^{25a} This implied that for the purpose of determining responsibility, aggression was defined as initiation of hostilities against the territory or armed forces of a state with an aggressive intent, *i.e.* without a sufficient legal justification.

In the war crimes trials after World War II, this concept of aggression was clarified. The Nuremberg Tribunal gave primary attention to the justifications for activities of the Hitler government, urged by the lawyers for the German defendants.

These lawyers sought to show that, in its campaigns in Norway and elsewhere, the German government was acting in necessary self-defence, and that in its invasion of Austria it was acting with consent of the Austrian government. This method implies that a government is presumed to be guilty of aggression if it engages in hostilities without such justifications. The presumption was augmented by explicit evidence of Hitler's intention to invade and annex certain territories,²⁶ and demonstrated by the failure of the German lawyers to convince the tribunal of the validity of the justifications they offered.

The United Nations International Law Commission has adopted this concept in its code of offences against the peace and security of mankind, which includes among acts of aggression, constituting such an offence, 'the employment by the authorities of a state of armed force against another state for any purpose other than national or collective

^{25a} See reports of Rumboldt Committee on the Greco-Bulgarian Case and Lytton Commission on the Manchurian Case. Quincy Wright, 'The Concept of Aggression', *op. cit.*, p. 386.

²⁶ *Trial of the Major War Criminals, Nuremberg, 1947*, vol. 1, pp. 188 ff. Evidence indicates that Hitler formulated a programme of aggression at meetings with his advisers beginning in October, 1937.

self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations'.²⁷

It was recognized by the Nuremberg Tribunal that individual liability for crimes against peace depended upon proof that the accused individual exerted effective influence in planning, preparation, initiation or waging such hostilities and that he was aware that the hostilities were aggressive. Thus the ordinary soldier who participated in an aggressive war without such influence or intent was not guilty of a 'crime against peace'.^{27a} The United Nations International Law Commission draft merely states that individuals are criminally liable if 'responsible' for aggression by the state.

The system of collective security in the United Nations Charter depends upon the determination of 'the existence of any threat to the peace, breach of the peace, or act of aggression'. After it became clear that the Security Council would usually be unable to make such determinations because of the cold war and the veto, efforts were made by the General Assembly to develop a more precise definition.

5. *Debate on Aggression in the United Nations*

Debate in the United Nations has concerned the questions of whether a precise definition of aggression is possible or desirable; whether if desirable, a definition of aggression should be by concrete enumeration of acts of aggression or by abstract definition; whether aggression should include only illegal threats or uses of armed force or should also include 'indirect aggression' by propaganda, infiltration or subversion; whether aggression should be confined to international hostilities or should, in some circumstances, include civil strife; whether aggression should be confined

²⁷ A.J., Supplement, Jan. 1955, p. 21. It is believed that genuine agreement with the state in whose territory the intervention takes place should be added.

^{27a} Quincy Wright, 'The Law of the Nuremberg Trial', A.J., Jan. 1947, vol. 41, p. 66.

to actual 'armed attack' or should include also immediate or even 'potential' threats of such attack; and whether the aggressor was always a state or might also be a government or a band of individuals.^{27b}

Debate on these points has occurred in the International Law Commission, in special committees, and in the General Assembly itself, but no final conclusions have been reached. The following definitions of the key terms in Article 39 seem however to be justified. This article provides:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accord with Articles 41 and 42, to maintain or restore international peace and security.

Although this article confers an obligation upon the Security Council in accord with the 'primary responsibility for the maintenance of international peace and security' which the members confer upon that body by Article 24, practice and the general acceptance of the Uniting for Peace Resolution of November 1950 makes it clear that if the Security Council fails to function, the General Assembly can make these determinations. The General Assembly has authority to do so from its general power to make recommendations to the members on any 'question or matter within the scope of the Charter' under Article 10, and from its more specific power, under Article 11 (2), to make such recommendations on 'any question relating to the maintenance of international peace and security' brought before it by either a member or a non-member. It is true, these powers of the General Assembly can only be exercised if the Security Council places the matter before it or if the Security Council is not 'exercising in respect to any dispute or situation the functions assigned to it' by the Charter. It has been argued that the latter

^{27b} *International Organization*, *op. cit.*, note 12, above; *Rep.*, vol. 2, p. 333 ff.; Art. 39, Sessions 23, 59.

circumstances can exist only if the Security Council has failed to put the question on its agenda or has formally removed the question from its agenda, both procedural matters.²⁸ In the Uniting for Peace Resolution, however, the General Assembly assumed that it could act 'if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression.' The General Assembly assumed that the existence of these circumstances would always be self-evident and consequently there could be no doubt that the Security Council was not functioning if it failed to pass a resolution, particularly if that failure was due to the use of the veto by a permanent member. The latter circumstance would imply that at least seven members of the Security Council recognized that the peace had been threatened or broken. On the basis of this argument the General Assembly took the Korean situation in hand in October, 1950, after the return of the Soviet delegation to the Security Council made further action by that body impossible. However, it was argued by the Soviet delegation that the existence of a threat to the peace, breach of the peace, or act of aggression is seldom self-evident, and that in the Korean episode none of these circumstances existed in the sense of Article 39 because there was no breach of *international* peace but only of *internal* peace, in Korea.

It would thus appear that the competence of the General Assembly under the Uniting for Peace Resolution depends, in case the matter is on the agenda of the Security Council, on general acceptance of a definition of the terms in Article 39 so precise that a failure of the Security Council to function will in fact be self-evident.

It is worth noting that in most of the cases which have arisen under Article 39 — Spain, Greek frontier, Indonesia, Palestine, Korea — it was argued that none of these circumstances existed. In view of the occurrence of the term 'International peace and security' in Articles 1 (1), 2 (3),

²⁸ *Rep.*, vol. 2, p. 69, Art. 27, sec. 15.

and elsewhere and the occurrence of the term 'international relations' in Art. 2 (3), as well as the prohibition of intervention by the United Nations in domestic matters in Art. 2 (7), it is clear that Art. 39 does not apply to 'domestic strife' *per se*. Experience has, however, shown that domestic strife can develop into international hostilities. The problem is to develop a definition indicating when that probability is so great as to make domestic strife a threat to international peace. Let us now proceed to a definition of the key terms in Art. 39.

6. *Breach of the Peace*

A 'breach of the peace', in the sense of Art. 39, exists whenever hostilities occur between armed forces controlled by governments, *de facto* or *de jure*, at opposite sides of an internationally recognized frontier.

The phrase 'hostilities between armed forces' implies operations of considerable magnitude, thus excluding crimes or duels with firearms between individuals or small groups of brigands or pirates with personal rather than political intentions. Acts of the latter character may constitute international crimes, but they are not 'breaches of the peace' in the sense of Art. 39.

Hostilities by bands of insurgents from the territory of another state would, however, come within the definition. The distinction between such armed hostilities and the policing of a frontier area against brigands and robbers with headquarters across the frontier, depends upon the magnitude and intention of the armed bands.

Hostilities resulting from the resistance by local or national authorities to landing or occupying forces of another state engaged in reprisals or protection of citizens would constitute armed hostilities, as would an encounter between war vessels of two states. But seizure of a merchant vessel of one state by a war vessel of another would not.

The phrase 'controlled by governments, *de facto* or *de jure*' underlines the distinction which excludes the

suppression of pirates or brigands from the definition. While perhaps organized, the latter are not pursuing political purposes, and so their organization can not be called a *de facto* government.

The term 'at opposite sides of an internationally recognized frontier' includes more than the boundary of recognized states. If civil strife achieves such magnitude, and so disturbs the interests of third states, that it is generally recognized as 'war', as was the case with the American Revolution (1775-83) and the Civil War (1861-65), it comes within the definition. The insurgents or rebels are in such circumstances recognized belligerents, and the line separating their area of occupation from that of the *de jure* government is an 'internationally recognized frontier'.

Even in the absence of active civil war, states may have recognized a juridical frontier within the territory of a state, separating temporarily the recognized government and a *de facto* government, or separating two governments, each recognized by different states. Such frontiers have existed in Germany, Kashmir, Palestine, Korea, Viet Nam, and China since World War II. Hostilities between armed forces controlled by the governments at the opposite sides of any of these frontiers would come within the definition. The same is true of hostilities between a dependent territory with a recognized international status and the metropole, as in the case of the Netherlands and Indonesia. Hostilities between armed forces of India and Pakistan, both parts of the British Commonwealth, would also be in this category, as would hostilities between armed forces of the Soviet Union and of the Ukraine or Byelo-Russia, each of which, as a member of the United Nations, has a recognized international status. On the other hand, policing actions against local uprisings by an administering power in provinces, or protected, mandated, trusteeship or other non-self-governing territories, in which it is generally recognized to have policing authority, would not come within the definition, unless of such magnitude as to be generally recognized as belligerency.

7. *Threat to the Peace*

A 'threat to the peace' in the sense of Art. 39 occurs when, because of a declaration of war, of intervention, or of other hostile intent by the Government of a state against another state, or because of the magnitude of civil strife within a state, there is immediate danger of a breach of international peace. Clearly declarations of the type referred to, even though not immediately followed by actual hostilities, constitute an immediate threat to the peace.

Civil strife, as noted, constitutes a breach of the peace, if actually recognized by most states as belligerency. Even prior to such recognition, insurrection or rebellion of considerable magnitude may constitute a 'threat to the peace'. This was certainly the case in the Spanish civil strife of 1936 to 1939. Whether civil strife not recognized as belligerency does threaten international peace depends upon the degree in which the hostilities affect the commerce or other interests of third states on the high seas and the degree to which third states are actually so involved with the contending factions by alliance, ideology, or sympathy, that they are likely to intervene, thus converting the civil strife into international hostilities.

An immediate danger to international peace, constituting a 'threat to the peace' is to be distinguished from a 'situation, continuance of which is likely to endanger international peace and security' referred to in Article 34 and from a 'situation likely to impair the friendly relations among nations' referred to in Article 14. The latter have been referred to as 'potential threats to the peace'. The Charter recognizes different degrees of danger to international peace, and only an immediate danger makes a situation a 'threat to the peace' in the sense of Article 39.

8. *Act of Aggression*

An act of aggression is the use or threat to use armed force across an internationally recognized frontier, for which a government, *de facto* or *de jure*, is responsible because of act

or negligence, unless justified by a necessity for individual or collective self-defence, by authority of the United Nations to restore international peace and security, or by consent of the state within whose territory armed force is being used.

The context of Art. 39 makes it clear that an 'act of aggression' is closely related to a 'breach of the peace' or a 'threat to the peace'. It would not appear that determination of an aggressor would be possible until there has been a finding that international peace, in the sense here used, has been broken or threatened. This implies use or threat to use armed force across an internationally recognized frontier, acts contrary to the obligations of states under Article 2 (4) of the Charter if the purpose is inconsistent with those of the United Nations.

It has been suggested that the term 'act of aggression' should include 'indirect aggression' such as infiltration, fifth columns, foreign organized conspiracies, or ideological propaganda.²⁹ Some of these activities have been defined as 'crimes against the peace and security of mankind' by the United Nations International Law Commission,³⁰ but all such crimes are not aggression. Traditionally, aggression has referred only to the use or threat to use armed force in international relations, contrary to an international obligation,³¹ and the Charter provision makes it clear that this

²⁹ Addresses by Secretary of State Dulles, 8th March 1955, Dept. of State, *Bulletin*, 21st March 1955, vol. 32, p. 460, and by former President Herbert Hoover, 21st April 1955, Sub-committee of Senate Foreign Relations Committee, Hearings, *Review of United Nations Charter*, p. 1743. Q. Wright, 'United States Intervention in the Lebanon', *American Journal of International Law*, Jan. 1959, vol. 53, pp. 112 ff.

³⁰ Report of International Law Commission, 1954, A.J., Supp., Jan. 1955, vol. 49, pp. 21-2.

³¹ 'A state which is under an obligation not to resort to force, which is employing force against another state, and which refuses to accept an armistice proposed in accordance with a procedure which it has accepted to implement its no-force obligation, is an aggressor, and may be subjected to preventive, deterrent, or remedial measures by other states bound by that obligation.' Quincy Wright, 'The Concept of Aggression', *op. cit.*, p. 395. 'Aggression is a resort to armed force by a state when such resort has been duly determined by a means which that state is bound to accept to constitute a violation of an obligation.'

use of the term is intended. Furthermore, the significance of the terms used in Art. 39, is to define a situation in which United Nations military action may be required or in which military action by states in 'individual or collective self-defence' is permitted. Clearly such drastic action would not be appropriate except against an illegal use of armed force by a state. The appropriate response of the United Nations, or of nations, to other international crimes, including so-called 'indirect aggression', should be of a very different character.

The phrase 'for which a government, *de jure* or *de facto*, is responsible because of act or negligence', indicates the essential difference between an act of aggression and a threat to, or breach of, the peace. The latter findings are of fact, without reference to legal responsibility. The finding of an 'act of aggression', however, implies that a government is designated as responsible for a threat to, or breach of, the peace.

International responsibility flows from injury to another through breach of international obligation and caused, not only by acts of legislative, executive, judicial, administrative or other authorities of the government, but also by negligence or want of due diligence by a government in controlling acts of individuals upon its territory.³² Thus, failure of a government to prevent armed bands or insurgents from organizing within its territory to engage in hostilities across a frontier, will make it responsible for aggression, if such hostilities actually occur.³³

Philip Jessup, Rapporteur, Harvard Research Draft Convention, on 'Rights and Duties of States in case of Aggression', A.J., Supp. 1939, vol. 33, pp. 829 ff. For quotation of uses of term 'aggression' in some fifty international instruments and official statements and citation of some hundred international obligations undertaken in general and bi-lateral treaties not to use armed force, *Ibid.*, p. 848 ff.

³² See Edwin M. Borchard, Rapporteur, Harvard Research on International Law, Draft Convention on 'Responsibility of States', A.J., Supp. 1929, vol. 23, p. 133, arts. 1, 7, 10, 11, 12.

³³ A state would not be responsible for 'aggression' under this definition if brigands or robbers cross its frontier to commit ordinary crimes in another country though it might be responsible for a want of diligence in policing its frontier. There would in this case be no breach of, or threat to, the peace. See above.

According to the theory of international law, states alone are responsible in the sense of an obligation to make reparation to other states for injuries resulting from violation of an international obligation, such for example as the obligation under Art. 2 (4) of the Charter 'to refrain from threat or use of force in international relations' inconsistent with the purposes of the United Nations. Acts of a *de jure* government of a state are attributable to the state, consequently, if such a government is responsible the state is responsible and bound to make reparation.

Nevertheless, for the application of coercive measures under Chapter VII of the Charter, it is believed that responsibility should be attributed to a government rather than to the state. Aggression clearly may be initiated by a *de facto* government not generally recognized as representing a state. Thus the *de facto* governments of North Korea and Communist China were branded by the United Nations as aggressors. As noted, breaches of, or threats to, the peace may occur in hostilities between forces of *de facto* as well as of *de jure* governments.

Furthermore, there are practical, political and psychological reasons for attributing aggression, for the purposes contemplated in Chapter VII of the Charter, to governments rather than to states. Enforcement measures by the United Nations are much more likely to succeed if in form they are not directed against a state, because if they are, loyal citizens of the state are likely to join their government in resistance against the measures. On the other hand if only a government is branded as the aggressor, the United Nations forces may gain the support of many citizens of the state who have opposed the aggressive policy of their own government and would be glad to see it replaced by a law-abiding government. Enforcement measures, furthermore, are not likely to be effective unless they succeed in changing the government of the state. Once this has been effected, the new government should be in a position to restore itself to good international standing.³⁴

³⁴ Quincy Wright, 'Enforcement of International Law', Proceedings, American Society of International Law, 1944 p. 82 ff.; *Ibid.*, *A Study of War*, University of Chicago Press, 1942, vol. 2, pp. 912 ff.

It may be noticed that in the theory of the United States Constitution the military measures undertaken by the federal government in the south, usually designated as the Civil War, were not considered in constitutional law action to coerce the southern states as such, but action to stop the illegal conduct of the governments of those states in nullifying federal legislation, preventing the functioning of federal services, and attempting to secede from the Union. The southern states, said the Supreme Court after the war, had never been out of the Union, and the unconstitutional acts of their governments were null and void. If this were otherwise, 'the war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation'.³⁵

It has sometimes been suggested that an act of aggression implies an aggressive purpose such as political, economic, or cultural expansion. The modern concept of aggression accepted by the Nuremberg Tribunal starts however with the assumption that all threats or uses of armed force in international relations are illegal unless a specific justification exists. The burden of proving such a justification rests with any government threatening or using armed force in international relations. This in fact was the theory of medieval jurists and for the classical publicists of modern international law. Resort to war was considered unjust unless a just cause could be proved. Grotius, following the tradition of the middle ages, asserted that defence, recovery of rights, and punishment of crimes were the just causes of war.³⁶ Modern practice designates the just causes of war differently, but operates with the same presumption. The Charter seems not to sanction the time-honoured practice of military reprisals in self-help to remedy wrongs, or the use of armed force to punish states deemed to be criminal. The idea of the criminal state has in fact largely disappeared. Crime, as

³⁵ Chase, C. J., *Texas vs. White*, 7 Wall. 700, (1869).

³⁶ Grotius, *op. cit.*, II, chap. 1, sec. 2, par. 2. See also Quincy Wright, 'The Outlawry of War', A.J., Jan. 1925, vol. 19, p. 92; 'The Test of Aggression in the Italo-Ethiopian War', *op. cit.*, p. 54; *A Study of War*, *op. cit.*, p. 886.

indicated in the trials after World War II, is thought to be committed only by individuals. Delinquency by a state creates liabilities of civil rather than of criminal character.³⁷ According to modern theory the remedying of international wrongs and the punishing of the international crimes of governments are not within the jurisdiction of other states. These objectives can only be accomplished by peaceful procedures or by authority of the United Nations. It is however recognized that protectorate or other treaties by which a state gives another the right to exercise policing powers in its territory, may be valid, and if so will justify the use of armed force for this purpose.

It is appreciated that the problem of determining the validity of one or more of the three possible justifications state in the above definition presents difficulties. According to Article 51 of the Charter, individual or collective self-defence is only justified after an 'armed attack' has occurred. This narrows the traditional conception of international law which permits defensive action before an attack has occurred if there is 'an instant and overwhelming necessity'.³⁸ Defence, under this conception, could be preventive, but only if the danger of attack is clear and immediate. Preventive war, when the danger is in any degree speculative or remote, constitutes aggression under this conception, and under the Charter any preventive war initiated by a government on its own responsibility is aggression.³⁹

There is also a problem to determine when a competent organ of the United Nations has authorized coercive measures to maintain or restore international peace and

³⁷ Quincy Wright, 'The Law of the Nuremberg Trial', A.J., Jan. 1947, vol. 41, p. 65 ff.

³⁸ Secretary of State Webster in the Caroline Incident (1842), J. B. Moore, *Digest of International Law*, vol. 2, p. 412; Quincy Wright, 'Meaning of the Pact of Paris', A.J., Jan. 1933, vol. 27, p. 44; 'The Outlawry of War', *Ibid.*, 1925, vol. 19, p. 90 ff.

³⁹ *Rep.*, vol. 2, p. 432 ff., art. 51, sec. 10. The United Nations Atomic Energy Commission in a report recommended by the Security Council, recognized that violation of an Atomic Energy control convention might be of so gross a character as to give rise to the right of self-defence under Art. 51. *Ibid.*, secs. 14, 15.

security. As noted, recommendations of the General Assembly, or the Security Council, would appear to be sufficient authorization, though it has been argued that a *decision* by the Security Council is necessary. A *recommendation* by the Security Council or by the General Assembly that a government be considered an aggressor would seem to relieve all states of their normal duty under Art. 2 (4) to refrain from use of force against it, and to permit them to take measures in pursuance of the purpose of the United Nations stated in Article 1 (1) of the Charter.⁴⁰

Most difficult of all perhaps is the determination whether a state has authorized another to engage in policing activities or intervention in its territory. Agreement with one faction during a civil strife has usually been considered an inadequate expression of the genuine consent of the state.^{40a} Obviously, if each faction in a civil strife welcomed the intervention of outside states, the civil strife might rapidly develop into a world war. Such a result was avoided in the Spanish civil strife of 1936-39 by the general non-intervention agreement among the powers, some of which had recognized the Loyalists, and others the Franco faction, as the government of Spain. On the other hand, the right of a sovereign state to make a treaty inviting another state to protect it or to restore civil order, can hardly be denied. At the Nuremberg trial, the tribunal carefully examined the question of whether an alleged invitation by the government of Austria for the entry of German troops, could be regarded as a justification for this invasion.⁴¹ Furthermore, consent to

⁴⁰ There is a clear distinction between a *duty* of a member to engage in collective measures arising from a Security Council decision (art. 25) and a *permission* to engage in such measure arising from a recommendation by either the Security Council or the General Assembly. It was recognized that while the Kellogg-Briand Pact imposed no *duty* upon the parties to act against aggression in violation of the pact, it did *permit* them to so act if the aggressor had been generally recognized. See Quincy Wright, 'Permissive Sanctions against Aggression', A.J., Jan. 1942, vol. 36, p. 103 ff.

^{40a} W. E. Hall, *International Law* (8th ed. Oxford, 1924), sec. 94, p. 347. Quincy Wright, 'United States Intervention in the Lebanon', at above note 29. ⁴¹ *Trial of Major War Criminals*, *op. cit.*, vol. 1, p. 192 ff.

future intervention in an alliance or collective defence treaty is not enough. Consent must be manifested by concrete invitation at the time of crisis.

While the foregoing definition of an act of aggression is believed adequate from a jural point of view, its application may be difficult during active hostilities, when evidence is usually difficult to obtain and third states may be uncertain which side is the aggressor and whether their national interests would not be best served by neutrality. Thus for purposes of applying enforcement measures it appears to be wise, as indeed the experience of the League and the United Nations suggests, to utilize a simpler test of aggression dependent upon response to 'provisional measures'. Such a test assumes that the responsibility for unnecessarily continuing hostilities is no less grave than the responsibility for beginning them and is easier to determine. According to this test, a government should not be declared an aggressor unless it has refused to accept or to observe provisional measures calling upon all participants in a situation, which has been declared a threat to the peace or a breach of the peace, to cease all hostile or threatening acts.⁴²

Reference has been made to the development of the concept of provisional measures in the League of Nations experience, and the value of such measures in dealing with a number of instances of hostilities.⁴³ As noted, Article 40 of the United Nations Charter authorizes the Security Council to call upon governments to comply with such measures, and suggests that failure of any government to do so should be taken account of in determining the aggressor. The value of such measures, however, depends upon the speed with which they are applied. Clearly if hostilities have resulted in considerable changes in the *de facto* possession of territory, a cease-fire order based upon the new situation would be considered unjust by the party which had been driven back, while a cease-fire order based upon the territorial situation before hostilities, might be difficult to enforce. Thus the

⁴² Quincy Wright, 'The Concept of Aggression', *op. cit.*, p. 381, 395 and Walter Millis, *Road to War*, 1935, p. 78, quoting Secretary of State Bryan. ⁴³ Above, notes, 24, 25.

justice and effectiveness of provisional measures depends upon the speed with which they are ordered. They should be issued before hostilities have changed the situation.⁴⁴

9. *Collective Security*

While a clear definition of the terms in Art. 39 is indispensable for the functioning of collective security, it is not the only requirement for such functioning. United Nations organs, particularly the General Assembly, must be equipped with procedures assuring rapid determination that there is a threat to the peace or breach of the peace, and a rapid ordering of provisional measure. If these steps do not stop, hostilities and coercive measures against the aggressor are necessary, procedures must exist by which the United Nations can rapidly designate the aggressor and recommend suitable diplomatic, economic or military action.

As it is unlikely, because of the veto, that the Security Council will be able to make these decisions binding upon the members, the effectiveness of collective security will depend on the will of the members to carry out recommendations of the General Assembly expeditiously and vigorously. Such a will depends upon general confidence in the soundness of the recommendations unlikely unless based upon a clear and generally accepted definition of aggression and upon the spirit of solidarity among the members of the United Nations, but would be assisted by definite commitments of members to make specified forces immediately available upon such recommendation. A general treaty has been suggested in the United States Senate, open to all members of the United Nations, by which each would commit itself to make available specified forces if recommended by a resolution of the General Assembly in which at least three permanent members of the Security Council concur.⁴⁵

⁴⁴ Quincy Wright, 'The Concept of Aggression', *op. cit.*, p. 393.

⁴⁵ 81st Congress, 1st Sess., Senate Concurrent Resolution, 521, (Thomas-Douglas), Hearings, Sub-committee of Senate Committee on Foreign Relations, *Revision of the United Nations Charter*, February 2nd, 1950, p. 2 ff.

Even with such commitments, the problem of organization and command of forces, the provision of material and the planning of logistics, arises. For this reason the Uniting for Peace Resolution provided for a Collective Measures Committee, and this made a number of recommendations for assuring effective co-ordination of forces against an aggressor.⁴⁶

It is unfortunate that in the Korean incident the United Nations permitted General MacArthur to expand the original objective of driving the aggressors back of the 38th parallel.⁴⁷ The United Nations had declared the policy in 1947 of establishing a 'unified, independent, and democratic government of Korea'. The effort to carry out this policy by force in 1950 resulted in the entry of Communist Chinese forces, in protracted hostilities, in discouragement with collective security under the United Nations, and in the exaggerated development of such collective self-defence alliances as NATO and the Warsaw Organization. These developments distracted interest from the proposals in the Uniting for Peace Resolution until revived by the Suez and Hungarian incidents of 1956.

It is believed that even without amendment of the Charter collective security can be greatly advanced by clear definition of threat to the peace, breach of the peace, and act of aggression; and implementation of the proposals in the Uniting for Peace Resolution, strengthened by supplementary agreements by which states earmark forces to be used when the General Assembly has designated the aggressor.

Such advance is of course contingent upon general renewal of belief in the purposes and principles of the Charter, general confidence that these purposes and principles

⁴⁶ Commission to Study the Organization of Peace, 7th Report, *Collective Security and the United Nations*, New York, July, 1951; *Reports of Collective Measures Committee*, General Assembly, Off. Rec., VI, Supp. No. 13 (A/1891); VII, Supp. No. 17 (A/2215), 1952.

⁴⁷ Quincy Wright, 'Collective Security in the Light of the Korean Experience', *Proceedings of the American Society of International Law*, 1951, p. 172, reprinted in Quincy Wright, *Problems of Stability and Progress in International Relations*, University of California Press, Berkeley, 1954, p. 103.

can be implemented through the United Nations, and general comprehension that the effort to achieve security by rivalry in armament building between two huge power blocs militates against security. Such rivalry manifested in the 'cold war' between the blocs of states led respectively by the United States and the Soviet Union since World War II observed during the last few years, has continually reduced the prospects of mankind in a world threatened by thermo-nuclear weapons, not only for international peace and security, but also for progress in human welfare and justice, and even for continued physical survival. There is need for the 'new spirit' which the heads of the four great governments sought unsuccessfully to invoke at Geneva in July 1955. Such a spirit, they said, would make possible an accommodation which 'will make life safe and happier not only for the nations we represent but for people elsewhere'.⁴⁸

⁴⁸ Department of State, *Bulletin*, August 1, 1955, vol. 33, p. 171.

CHAPTER V

DEVELOPMENT OF THE UNITED NATIONS¹

1. *Preparation for a Review Conference*

The United Nations may develop gradually through the processes of Charter interpretation, supplementary treaties, and practice continually adapting it to changing conditions, or it may change rapidly through Charter amendment or revision, or even by the supersession of the Charter by a new instrument, as illustrated in the United States of America in substituting the Constitution for the Articles of Confederation in 1788. On the 10th Anniversary of the United Nations in 1955 there was great interest in Charter revision.

The Charter provides that the question of calling a conference to review² the Charter shall be placed on the agenda of the tenth annual session of the General Assembly, and that such a conference shall be held if voted by a majority of the members and any seven members of the Security Council.³ The tenth session of the General Assembly,

¹ This chapter is based on materials submitted to the Commission to Study the Organization of Peace and used in the 9th Report on *Charter Review Conference*, New York, 1955.

² The term 'review' suggests a purpose broader than amendment or general revision of the Charter, perhaps including proposals for utilization, interpretation, and supplementation. The French text, however, uses the term 'revision' and the Spanish 'revisar'. (*United States Treaty Series*, No. 993.)

³ Art. 109 (3). This article emerged from a proposal made by the United States at San Francisco to placate the smaller states who opposed the veto by the permanent members of the Security Council. It was opposed by the Soviet Union on the ground that a review conference should not be facilitated since it would impair the stability of the United Nations and invite attacks upon the veto. *United Nations Conference on International Organization*, Records, UNCIO, vol. 7, pp. 220, 250. The text requires a majority of all the members, not merely of those present

on 21 November 1955, decided that a review conference should be held at a time and place to be determined by a committee of all the members in consultation with the Secretary-General. The committee was to report to the twelfth session of the General Assembly in 1957.⁴ Amendments to the Charter may be recommended by a two-thirds vote of the review conference or of the General Assembly itself, but in either case they take effect only if ratified by two-thirds of the members of the United Nations including all of the great powers.⁵

In preparation for the review conference, the Secretary-General, pursuant to an Assembly resolution of 1953 prepared a repertory of the practice of United Nations organs. The Preamble to the resolution of the tenth session of the Assembly affirmed the general opinion expressed in Assembly debate that the Charter should be reviewed in the light of

and voting as in Art. 18 (3). Assembly sessions other than the 10th can call a review conference only by a two-thirds vote. [Art. 109 (1).] There was question whether the 10th session could by majority vote call a conference to meet at an indefinite future but the resolution was approved by more than two-thirds of the Assembly. (Note 4 below.) It has been suggested that the Charter contemplates only one Review Conference in the entire history of the United Nations. Though this interpretation is suggested by the statement of some delegates to the San Francisco Conference (UNCIO, vol. 7, p. 211) and by the report of the Commission adopted by the Plenary session (*Ibid*, vol. 1, p. 617), it is not supported by the text nor by the general course of debates at San Francisco. See Jacob Robinson, 'The General Review Conference', *International Organization*, vol. 8, Aug. 1954, p. 316.

⁴ *United Nations Review*, Jan. 1956, vol. 2, p. 36; Department of State, *Bulletin*, Dec. 5, 1955, vol. 33, p. 949. The vote was 43-6 (Soviet bloc, Syria) with 9 abstentions (Afghanistan, Denmark, Iceland, India, Norway, Saudi Arabia, Sweden, Yemen, Yugoslavia).

⁵ Arts. 108, 109 (2). It has been suggested that the veto may not apply to ratifications of amendments proposed by the review conference called by the tenth session of the General Assembly because of the order of paragraphs 2 and 3 of Article 109, but such an interpretation was certainly not intended at San Francisco and is not a permissible interpretation of the text. See Robinson, *op. cit.* p. 318 ff and Secretary of State Dulles, *Review of the United Nations*, Hearings before a Sub-committee of the Committee on Foreign Relations, United States Senate, 83rd Cong., 2nd ses., Washington, Government Printing Office, 1954 (Wiley-George Sub-committee Hearings), Part 1, p. 25.

experience, but only at a time when the state of world opinion and international politics is auspicious. Up to the time of publication of this work the conference had not been summoned.

National governments also made preparations for Charter review. The United States Senate adopted a resolution in 1953 authorizing a sub-committee of the Committee on Foreign Relations to study proposals to 'amend, revise, or otherwise modify or change international peace and security organizations' and to advise the President in regard to the proposed conference.⁶ Senator Alexander Wiley, the first chairman of this sub-committee, had served on a similar sub-committee in 1950 of which Senator Elbert Thomas was chairman. The Thomas sub-committee held extensive hearings on seven resolutions which had been introduced into the Senate proposing various forms of Charter revision or international government, but had made no concrete recommendations, partly because of 'the great divergence of views that prevailed among the witnesses', partly because of the serious constitutional issues involved in some of the proposals, and partly because it was uncertain what effect the Korean crisis then active would have on public opinion. 'The fundamental issue of the day,' said the report, 'is the East-West conflict, not the question and nature and extent of international organization. The result is that any serious proposals to strengthen the United Nations, to create a world federation, or to create an Atlantic Union, soon become inextricably related to the effect the proposals will have on the East-West conflict.'⁷

Secretary of State Dulles favoured the holding of a review conference.⁸ In his address to the American Bar Association on August 26, 1953, he referred to 'serious inadequacies' in the United Nations Charter. Among these was the lack, because the San Francisco Conference was not aware of the

⁶ Sen. Res. 126, 83rd Cong., 1st Sess., July 1953.

⁷ Sen. Rep. No. 2501, 81st Cong., 2nd Sess., 1950, pp. 53-4. See also Hearings, *Revision of the United Nations Charter*, Sub-committee (Thomas) of Senate Committee on Foreign Relations, Feb. 1950.

⁸ Dept. of State, *Bulletin*, Sept. 7, 1953, xxix, p. 311.

atomic bomb, of sufficiently 'emphatic and realistic' provisions for 'disarmament and the regulation of armament'; the requirement of unanimity among the great powers to make important decisions, because the leaders at the time looked upon the United Nations as a projection of the wartime alliance; and the insufficient attention in the Charter to 'law which embodies eternal principles of justice and morality' and which should guide all decisions of the United Nations and its members. He thought the review conference would 'be comparable in its importance to the original San Francisco Conference'.⁹ In the General Assembly in September 1953 he pointed out that many of the smaller nations thought there was 'an excessive award of power to the permanent members of the Security Council' and called attention to the Vandenberg resolution, adopted by the Senate in June, 1948, calling for elimination of the veto on Security Council resolutions concerning pacific settlement and the admission of new members. He hoped both governments and private organizations would study the question intensively.¹⁰ In January 1954, before the Wiley Sub-committee, he emphasized the achievements of the United Nations and said its greatest weakness arose from the veto, but added: 'the defects in the Charter can to a considerable extent be corrected by practices which are permissible under the Charter,' and 'differences of opinion' should not be pressed to a point 'such that the Review Conference would result in undermining the United Nations or disrupting it. The United Nations as it is, is better than no United Nations at all.' He reaffirmed the suggestions he had made in August, 1953 in regard to possible revisions, adding three more—strengthening of collective security, the problem of achieving universality, and the question of weighted voting in the General Assembly.¹¹

Many private organizations in the United States and elsewhere manifested an interest in the problem of Charter revision not only in testimony before the Senate

⁹ *Ibid.*, p. 310. ¹⁰ *Ibid.*, Sept. 28, 1953, xxix, p. 407.

¹¹ Wiley-George, Sub-committee Hearings, Part I (Jan. 18 and March 1954), pp. 1, 5, 6, 8, 9.

sub-committees of 1950 and 1954, but otherwise.¹² The Brookings Institution, the Carnegie Endowment for International Peace, the International Law Association, and the Commission to Study the Organization of Peace conducted scholarly studies on the text of the Charter; on its making, interpretation and application; and on the development of government policies and public opinion concerning the United Nations.¹³

¹² Among discussions of Charter Review, mention may be made of a symposium by the *American Academy of Political and Social Science* ('The Future of the United Nations: Issues of Charter Review', *Annals*, November, 1954). See also bibliography of United States government publications, Department of State, Public Service Division, *Questions and Answers on United Nations Charter Review*, June 1954.

Special interest groups that have discussed the question include:

World Federalists (Copenhagen, Congress, Aug. 25-29, 1953, with 500 delegates and observers from 27 countries, recommendations published in *Voice of the World Citizen*, Organ of the Crusade for World Government, No. 6, Sept. 1953; *United World Federalists*, 125 Broad St., New York 4, N. Y., '1955 Year of Opportunity', *The Federalist*, Monthly, February 1954; see also below Note 26; *Institute for International Government*, Peace through Disarmament and Charter Revision, Detailed proposals for Revision of the United Nations Charter, by Greenville Clark and Louis B. Sohn, Preliminary Printing, July 1953, 95 Main St., Concord, N. H., Supplement, Feb. 1956 and *World Peace through World Law*, 1958.

Democratic Federalists, *Freedom and Union*, Magazine of the Democratic World, Clarence K. Streit, ed., monthly, 700, 9th St., N. W., Washington 1, D. C.; *The New Federalist*, by Publius II, Owen J. Roberts, John F. Schmidt and Clarence K. Streit, introduction by John Foster Dulles, New York, Harper, 1950; *Freedom against Itself*, by Clarence K. Streit, New York, Harper, 1954.

Pacifists (*The Friend*, a Religious and Literary Journal, vol. 127, Feb. 1954, pp. 254 ff.)

¹³ International Law Association, Edinburgh Conference, 1954, Committee on the Review of the Charter of the United Nations, Report by Georg Schwarzenberger, includes bibliography, pp. 94-8; Commission to Study the Organization of Peace, 9th Report, *Charter Review Conference*, New York, August 1955; Brookings Institution, Washington, D.C., five volumes including Leland M. Goodrich and Anne P. Simons, *The United Nations and the Maintenance of International Peace and Security*, and Francis O. Wilcox and Carl M. Marcy, *Proposals for Changes in the United Nations*; Carnegie Endowment for International Peace 20 volumes dealing with the opinion in selected countries concerning the United Nations

The Arden House Conference, composed of fifty Americans with special interest in and knowledge about the United Nations because of service in the Secretariat or the American delegation, or in journalism, education or business related to its activities, meeting in the summer of 1954, were unfavourable to a review conference. Many participants felt that such a conference 'might arouse extravagant hopes, the disappointment of which might lead to disillusionment and a weakening of public support for the United Nations'.¹⁴

Debate in the General Assembly has indicated a variety of opinions. In 1953 the United States and other American countries favoured a review conference, especially in order to moderate the veto and to make the underlying law of the Charter more precise.¹⁵ The Soviet Union opposed any revision of the Charter and considered the proposal for a conference a manoeuvre of American imperialism to modify 'the fundamental principle of the unanimity of the great powers'.¹⁶ A considerable number of speakers on the subject were doubtful of the advisability of having a conference. France and India thought development of a better spirit in using the Charter was more important than formal revision. South Africa thought inadequacies of the United Nations could be attributed more to 'functional mistakes' than to 'Charter deficiencies'. The United Kingdom, Netherlands, New Zealand and Israel favoured but did not commit themselves to the desirability of a Conference.¹⁷

This cautious and noncommittal opinion was developed at length in the general debate by Osten Unden of Sweden.

including Indian Council of World Affairs, *India and the United Nations*, 1957 and Carnegie Endowment, *The United States Public and the United Nations*, 1958.

¹⁴ Fifth American Assembly, Arden House, Harriman, New York, *The United States Stake in the United Nations*, Problems of United Nations Charter Review, Press Summary, August 2, 1954. See also American Association for the United Nations, *Conference on United States Responsibility for World Leadership, Resolutions*, 1954, 1955.

¹⁵ *United Nations Bulletin*, Oct. 1, 1953, XV, p. 303; Oct. 15, 1953, XV, pp. 366, 367. ¹⁶ *Ibid.*, p. 266.

¹⁷ *Ibid.*, pp. 260, 264, 299, 304, 311; Oct. 15, 1953, pp. 348, 377, 378.

He urged a study of practice under the Charter and doubted whether any great power would abandon its veto on matters of vital interest such as military action against aggression. He favoured more precision in expression of the underlying law of the Charter, but doubted whether the Soviet Union, which had sought to limit legal obligations, or the United States, which had lost its enthusiasm for a covenant on human rights, or the colonial powers, which opposed legal definitions of self-determination, would agree on any such expression. He noted that the compulsory jurisdiction of the International Court of Justice could be developed through acceptance by states of the optional clause of the Statute. In view of these considerations, he saw little chance for important formal amendments and thought any action that might drive the Soviet Union out of the United Nations should be opposed. He considered that lasting peace depended more on the policies of the states, especially of the great powers, than on the text of the Charter, which was on the whole satisfactory. 'Examining the suggestions for significant amendments to the Charter,' he said 'would thus reveal that they either reflect illusions as to political reality or else that they are aimed at something other than the realization of the proposed changes.'¹⁸

Discussion in the tenth session of the General Assembly, under the spell of the Summit Conference in the summer of 1955 was more optimistic, though it was generally recognized that the success of a review conference would depend upon the avoidance of unrealistic expectations by world opinion and upon international conditions at the time it is held. The United States wished for an early conference. The Soviet bloc continued to oppose any conference at all. The Scandinavian and several Arab and Asian states wished to avoid commitment of the General Assembly. Compromise, with

¹⁸ *Ibid.*, Oct. 1, 1953, XV, p. 303. The 8th Session of the General Assembly rejected a resolution soliciting the opinions of members on Charter revision and merely requested the Secretary-General to prepare documentation for use of the 10th session. See General Assembly, 6th Committee, *Official Records*, 8th Session, p. 35, approved by General Assembly, by vote of 54 to 5 with no abstentions, November 27, 1953.

commitment but no specification of the date, won general support.¹⁹

As pointed out in Chapter II the United Nations is more than the Charter and it has great potentialities for growth within the present Charter. Attention will now be given to these potentialities as demonstrated in practice, after which proposals for both radical and moderate revision of the Charter will be examined.

2. *Development of the United Nations in Practice*

Actual experience has demonstrated the capacity of the United Nations to grow without amendment of the Charter. The collective security procedures contemplated by the Charter operating through Security Council decision and Military Staff Committee recommendations has proved unworkable because of the obstructive use of the veto by the Soviet Union.

Different procedures have, however, been developed, as noted in Chapter IV, operating through the General Assembly. These procedures have been utilized effectively in the Korean (1950), Suez (1957), Lebanon (1958) and other situations. While the General Assembly cannot make 'decisions' on the maintenance of international peace and security but only 'recommendations', and while it is a more unwieldy body than the Security Council, it has proved able to meet rapidly in emergencies, to function, and to set up subsidiary bodies. The Uniting for Peace Resolution of 1950 provided for a Peace Observation Commission and a Collective Measures Committee to increase the efficiency of Assembly action. These procedures, while not anticipated by the Charter, are not contrary to its terms and, in fact, were made possible through additions to the powers of the General Assembly at the San Francisco Conference beyond those provided at Dumbarton Oaks.²⁰

¹⁹ See Note 4 above.

²⁰ Commission to Study the Organization of Peace, 7th Report, *Collective Security Under the United Nations*, New York, July 1951; *Repertory of Practice of United Nations Organs* (New York, 1955 [Rep.], vol. 1, p. 365; vol. 2, pp. 300 ff., art. 11, secs. 105-09).

Other significant developments have been the interpretations, advised by the International Court of Justice, that the United Nations is a jural personality competent to protect its agents even against a non-member state, and that the United Nations can succeed to the powers of the League of Nations in supervising mandates.²¹

The practice, holding that abstention of a great power from voting in the Security Council or absence of such a state from a meeting of that body is not to be regarded as a veto, has proved useful in obtaining action from the Security Council in the settlement of controversies.²² The absence of the Soviet Union from Security Council meetings in June 1950 made it possible for the Security Council to function in the early stages of the Korean hostilities.

Procedures utilizing individual conciliators and investigatory commissions, and organizing elections in disputed areas, have also facilitated the work both of the Security Council and of the General Assembly in dealing with disputes and situations threatening the peace.

Recognition of the political role of the Secretary-General of his competence to deal diplomatically with states for the solution of disputes and of his capacity to maintain, with support of the General Assembly, United Nations guards and technical field services to protect United Nations missions in disturbed areas has also been a significant

²¹ Reparations for Injuries Suffered in the Service of the United Nations, I.C.J. Reports, 1949, p. 174, *American Journal of International Law*, vol. 43, July 1949, p. 589; International Status of South-west Africa, I.C.J. Rep., 1950, p. 128, *American Journal of International Law*, vol. 44, Oct. 1950, p. 757; *Rep.*, vol. 4, p. 166, art. 77, sec. 28; vol. 5, p. 336, art. 104, secs. 44-9.

²² *Rep.*, vol. 2, p. 81, art. 27, secs. 46-52. See list of 64 decisions of the Security Council in which a permanent member abstained from exercising a veto. (*Rep.*, vol. 2, p. 97 ff.) The efforts of the San Francisco Conference and of the General Assembly to induce the permanent members to specify circumstances in which the veto would not be used, and to use it when it was available only to defend important interests have not proved effective in respect to the Soviet Union. See statement of sponsoring governments at San Francisco, 1945 (*Rep.*, vol. 2, p. 104) and recommendation of General Assembly on basis of report of its interim committee, 1949 (*Rep.*, vol. 1, p. 280).

development. Such guards proved particularly useful in dealing with the Palestine situation, in arranging armistices between Israel and its neighbours²³ and in pacification after the Suez situation of 1956. It has been suggested that a permanent force could be useful to observe and tranquilize disturbed situations.^{23a}

The exercise of authority by United Nations organs on the basis of treaties or other instruments apart from the Charter itself, has indicated the broad possibilities of adapting the United Nations through supplementary agreements. On such a basis the Security Council set up a regime for Trieste, and the General Assembly partitioned Palestine and disposed of the former Italian colonies.²⁴ The General Assembly has also considered itself competent, on advice of the International Court of Justice, to supervise South Africa's administration of South-west Africa on the basis of the mandate confirmed by the League of Nations.²⁵ The South African government, however, has resisted this practice.

Most important has been the expansion of the economic and social work of the United Nations, not only through the establishment of Specialized Agencies and commissions by procedures set forth in the Charter, but also through agencies not contemplated by the Charter such as those responsible for the Expanded Technical Assistance and Children's Fund programmes.

These developments in the first ten years of United Nations history suggest that with further experience other organs and other procedures can be developed to achieve United Nations' purposes and to maintain its principle of universality. While the Soviet Union would be unlikely to agree to formal amendments modifying the veto, it is not likely to withdraw because of practices by the United

²³ C.S.O.P., *Report on Armed Guards*, Sept. 1948, and *Report on United Nations Guards and Technical Field Services*, Sept. 1949; *Rep.*, vol. 5, p. 266, art. 101, secs. 170, 171.

^{23a} William R. Frye, *A United Nations Peace Force*, New York, Oceana Publications, 1957.

²⁴ *Rep.*, vol. 1, p. 472, art. 14, sec. 30.

²⁵ Above Note 21.

Nations which avoid the veto, provided those practices are kept within the formal terms of the Charter. It approved recommendations of the General Assembly in the Suez crisis of 1956 after Great Britain and France had vetoed a Security Council Resolution.

3. *Proposals for Radical Revision of the Charter*

Proposals have been made for radically revising the Charter in different directions. Greater centralization by converting the United Nations into a world federation, or a union of democracies has been proposed, as has greater decentralization by emphasis upon regionalism or national sovereignty.

Advocates of world federation wish to endow the General Assembly with limited power to legislate for individuals, to levy taxes, and to raise military forces, and, in order to make such an extension of its powers more palatable to the larger states, to modify the composition and voting procedures in the General Assembly giving weight to peoples more nearly in accord with their actual political importance in the world. This body of opinion also wishes to extend the military and executive powers of the Security Council; to make it more responsible to the General Assembly; and to give the International Court of Justice compulsory jurisdiction in all legal disputes between nations. A number of proposals of this kind have emerged supported by private groups and organizations, often of international character, rather than by governments. They vary in the degree of centralization advocated from 'maximalists' who wish to invoke the will of the people of the world above national governments to establish a constitution of world government with far reaching powers, to the 'minimalists' who hope governments may be persuaded to accept amendments to the Charter qualifying national sovereignties only so far as essential for the functioning of a world federation with sufficient central power to keep the peace.²⁶

²⁶ Sen. Con. Res. 56 (Tobey), 66 (Taylor), and 133 (Sparkman); Sen. Rep. No. 2501 (Thomas), 81st Cong. 2nd Sess., Sept. 1950, on *Revision of the United Nations Charter*, pp. 27, 30, 35; Hearings, Sub-committee of

Certain advocates of democracy and human freedom wish to exclude non-democratic states from the United Nations.²⁷ Some have urged an increase in the legislative, executive, and judicial power of such a union of free nations in order to protect human rights and to defend the Union against hostile attacks from the non-democratic world. An important movement in the United States wishes to develop the North Atlantic Treaty Organization into a federation.²⁸ Many who favour such a democratic federation have wished to develop it as a regional arrangement within the United Nations, but so powerful as gradually to penetrate the entire United Nations with its ideology.

Some advocates of regionalism wish to diminish the control of the United Nations over the activities of regional organizations, and even to modify the organization of the General Assembly and the Security Council to represent not states but regions. Many members of the United Nations are also members of organized regions, such as the Organization

Senate Foreign Relations Committee, Feb. 1950, pp. 73 ff, 172 ff, 318 ff. See also *Resolutions of World Federal Government Conference*, Copenhagen, August, 1953. The United World Federalists in the United States would write into the United Nations Charter limited and specific powers for instituting and enforcing universal disarmament. They would give the United Nations the right to enforce disarmament regulations on individuals as well as nations; to recruit, train and command its own inspection, police and armed forces for world security; and to raise dependable revenue, under defined safeguards, to these ends. They call for universal membership; a weighted system of voting more equitably reflecting the relative size and responsibility of the nations, so that the veto power could be eliminated from the Security Council which would become an executive branch responsible to the more representative Assembly. They would give the United Nations Court the right to interpret the Charter and compulsory jurisdiction in matters relating to the new powers and justiciable disputes. All powers not expressly delegated to the United Nations they would reserve to the nation states. See *How to Give the United Nations Limited Powers to Prevent War* (New York, 1954).

²⁷ Herbert Hoover, addresses April 27, 1950, July 11, 1950, 'A Cause to Win', *The Freeman*, New York, 1951, pp. 14, 19. Mr. Hoover subsequently stated before the Wiley-George Sub-committee (April 22, 1955) that he favoured keeping the Soviet States in the United Nations.

²⁸ Sen. Con. Res. 57 (Kefauver), Sen. Rep. cit., p. 32 ff.; Hearings, cit., p. 228 ff.

of American States, the Arab League, the Council of Europe, the North Atlantic Treaty Organization, the South-East Asian Treaty Organization, the Warsaw Pact and the Baghdad Pact^{28a}, but they have generally given at least formal support to the position assigned to such arrangements by Articles 51 and 52 of the Charter.²⁹

Finally extreme advocates of national sovereignty wish to modify the text or interpret provisions of the Charter so as to make the reservation of domestic jurisdiction more extensive. They hope especially to weaken the effectiveness of United Nations action in such fields as human rights and non-self-governing territories.³⁰

Public opinion polls indicate that no radical revisions of the Charter are likely to gain wide support in the near future. In the United States two-thirds of the public with an opinion, according to these polls, favour the United Nations and either wish to keep it as it is or to strengthen it without changing its basic character.³¹

^{28a} Changed to Central Treaty Organization after withdrawal of Iraq in 1958.

²⁹ Sen. Con. Res. 12 (Fulbright-Thomas) Sen. Rep., cit., p. 37 ff.; Hearings, cit., p. 344; C.S.O.P., 8th Report, Regional Arrangements, June, 1953.

³⁰ See Comments of representative of South Africa on domestic jurisdiction, and of France on non-self-governing territories in General Assembly, Sept. 1953, *United Nations Bulletin*, Oct. 1, 1953, XV, p. 299; Oct. 15, 1953, XV, p. 348, and Sen. Rep. on Sen. J. Res. 1 (The Bricker Amendment), 83rd Cong., 1st Sess., pp. 33, 53, June, 1953; Hearings, Sub-committee (Langer) of Senate Committee on the Judiciary, *Treatise and Executive Agreements*, Feb.-April, 1953, pp. 676, 745.

³¹ The Roper Poll, on United States Opinion, Sept. 1953, indicated 9 per cent isolationist, 7 per cent hopeless, 6 per cent Atlantic Union, 11 per cent world government, 21 per cent complacent United Nations, 35 per cent militant United Nations, and 11 per cent no opinion. The Carnegie Endowment Study of *The United States Public and the United Nations* (New York, 1958) 'showed that soon after the Suez and Hungarian crises in 1956, 77 per cent of those interviewed felt that the United Nations was doing a good or a fair job; only about one in ten said it was doing a poor job' (p. 9). In all the twelve cities distributed through the country, in which surveys were conducted, 'the community leaders were broadly in favour of the United Nations and its objectives (p. 14). Neither people nor leaders were however, well informed about the United Nations' (p. 9, 15).

The Carnegie Endowment's study of opinion concerning the United Nations in twenty-five countries 'impresses by the extent and depth of faith' in it everywhere. Extreme positions on nationalism, regionalism, communism, or anti-communism, which would weaken the United Nations and diminish its capacity to achieve its objectives, do not command extensive support. The will of governments and peoples to build an effective United Nations was, however, probably less strong in 1959 than it was at the time of the San Francisco conference. Although the United Nations is more frequently criticized for being too weak than for being too strong, it is not likely that proposals for world federation could gain the support necessary to amend the Charter in any foreseeable future.^{31a}

4. *Proposals for Moderate Revision of the Charter*

Many textual changes have been suggested to clarify the drafting of the Charter without, it is said, changing its meaning. It is not always appreciated, however, that removal of an ambiguity cuts off a possibility of development and, therefore, actually changes the meaning of the instrument. Such changes might be of value in avoiding some controversies but they might also reduce the flexibility of the United Nations and prevent developments which will be useful or even essential at some future time. This problem has been examined by Professor Kelsen and other commentators on the Charter^{31b} and will not be considered here.

Secretary of State Dulles suggested a study of proposals for strengthening the capacity of the United Nations to regulate armaments, for moderating the veto, for strengthening international law and assuring its application, for achieving universality of membership, for strengthening procedures of collective security, and for improving the

^{31a} Carnegie Endowment for International Peace, Annual Report, 1954-55, p. 24 and *op. cit.* note 31, p. 15.

^{31b} Hans Kelsen, *The Law of the United Nations* (London: Stevens, 1950). See also Note 13 above.

voting procedure in the General Assembly.³² Progress in all of these directions, and also in the economic and social field, is possible, as has been noted without amendment of the Charter.³³ These proposals are perhaps typical and brief attention will be given to each of them.

Disarmament and Collective Security

It is clear that the United Nations action for limitation of armament and collective security are related to one another and to action for reducing international tensions. The great powers must agree on programmes of disarmament before they can be achieved, and the United Nations already offers facilities for achieving such agreement if the will exists. Agencies better adapted to giving advice than the Military Staff Committee might be made available as suggested by the Commission to Study the Organization of Peace in 1947.³⁴ By the Uniting for Peace Resolution of November 1950, the General Assembly established the Collective Measures Committee, the Peace Observation Commission and other agencies for this purpose. These actions, stimulated by Korean hostilities, indicated the capacity of the United Nations to maintain collective security through General Assembly recommendations when the Security Council is unable to function,³⁵ although the agencies established by the Uniting for Peace Resolution should be more fully developed and more frequently utilized.

³² See Notes 9, 11 above.

³³ C.S.O.P., 7th Report, *Collective Security Under the United Nations*, July, 1951; 8th Report, *Regional Arrangements for Security and the United Nations*, June, 1953; 9th Report, *Charter Review Conference*, August 1955; 10th Report, *Strengthening the United Nations*, September 1957. See also Sen. Con. Res., 72 (Ferguson), 81st Cong. 2nd sess., Sen. Rep. 2501 (Thomas), p. 1, 38 ff. Hearing: Sub-committee of Senate Committee on Foreign Relations, Sen., Feb. 1950, p. 348 ff.

³⁴ C.S.O.P., 5th Report, *Security and Disarmament under the United Nations*, June, 1947, p. 27 ff.

³⁵ C.S.O.P., 7th Report, *Collective Security under the United Nations*, July, 1951, p. 6; United Nations General Assembly, *Reports of the Collective Measures Committee*, 1951, 1952.

It has been suggested in Chapter IV that general acceptance of more precise definitions of the terms 'threat to the peace, breach of the peace and act of aggression' in Article 39 of the Charter would facilitate the functioning of collective security, as would the acceptance by members, through supplementary agreements, of obligations to make specified forces available on recommendation of the Security Council or the General Assembly. A general guarantee clause, such as that in Article 10 of the League of Nations Covenant, obliging all members to take action within their capacity to stop aggression, has been suggested as a means to strengthen collective security, and could be effected either by supplementary agreement or Charter amendment. Under the Charter, members are obliged by Article 2 (4) to refrain from aggression and by Article 25 to carry out decisions of the Security Council, but they are under no positive obligation to co-operate in the suppression of aggression in the absence of such decision, although to assure such co-operation is a principal purpose of the United Nations. To avoid the danger that such a guarantee might be used as a justification for attack upon an alleged aggressor, it would seem desirable that such a guarantee include an acceptable procedure for determining the aggressor, as for instance a two-thirds vote of the General Assembly including at least three of the permanent members of the Security Council. Such a workable procedure coupled with a precise definition of aggression would greatly strengthen collective security.

Apart from recommending the contribution of security forces by members, the General Assembly has power to provide for direct recruitment of United Nations forces. A United Nations legion so recruited was suggested by the Secretary-General and the Collective Measures Committee.³⁶ Armed guards recruited by the Secretary-General were utilized by the Palestine Commission and the General Assembly has specifically authorized the Secretary-General

³⁶ *Report of Collective Measures Committee*, Gen. Ass. Rec. VI, Supp. No. 13, 1951, par. 36, a proposal for a 'United Nations Volunteer Reserve', composed of 50,000 or 60,000 volunteers was later substituted. *Ibid.*, Gen. Ass. VII, New York, 1952, pars. 87-90.

to recruit Technical Field Services to assist the United Nations missions.³⁷ The much larger forces composed of contingents from smaller nations, utilized by the Secretary-General under General Assembly authorization after the Suez crisis of 1956 has led to a wide demand for a permanent force of this character.^{37a}

Such a United Nations force would require an expansion of revenue. The United Nations now receives revenue from various services which it provides, and consideration has been given to other sources of revenue, apart from increased contributions by members.^{37b} At present the members of the United Nations spend on the average less than one part in two thousand of their governmental budgets on the United Nations and the Specialized Agencies. Expanded exercise of its powers both of the sword and the purse is possible within the present terms of the Charter.

Provision for inspection is an essential element of disarmament agreement and such provision would be facilitated if it were clear that members are in principle obliged to admit to their territories commissions established by the Security Council or the General Assembly to investigate conditions which threaten international peace and security. Violation of a disarmament agreement would constitute such a threat. An obligation of members to admit to their territories investigatory commissions established by decision of the Security Council may be implied from Articles 2 (5), 25, 29, 34, 104 and 105 of the Charter.³⁸ It is less clear whether such an obligation can be implied in respect to commissions established by the General Assembly.³⁹ The

³⁷ C.S.O.P., 6th Report, *Collective Self-Defence under the United Nations*, Memorandum and Draft Treaty for Implementation of Article 51, May, 1948; *United Nations Guards*, Sept. 1948; *The Security of the United States and Western Europe* Jan. 1949; *United Nations Guards and Technical Field Services*, Sept. 1949.

^{37a} Frye, loc. cit., Note 23a above; C.S.O.P., 10th Rep., pp. 5, 36, 65, 86.

^{37b} *Rep.*, vol. 1, pp. 527, 556.

³⁸ *Rep.*, vol. 2, p. 120 ff, 224 ff, Art. 29 secs. 17 ff; Art. 34, secs. 2 ff.

³⁹ *Rep.*, vol. 1, pp. 676, 687, Art. 22, secs. 52, 104-07; C.S.O.P., 10th Rep., pp. 5, 36, 79.

problem of defining the competence of inspecting commissions has proved a major obstacle in disarmament discussions.

Improvement in means of pacific settlement might relieve international tensions and encourage armament limitation agreements. Adaptation of procedures set forth in Chapter VI of the Charter to changing conditions has proved possible through the use of conciliators, of interpretations of voting procedures in the Security Council, and of General Assembly recommendations and commissions. It has been suggested that the capacity of the Security Council would be strengthened if its membership were made more adaptable to changing circumstances. Authority might, for example, be given to the General Assembly, on recommendation of the Security Council, to enlarge the latter body and to admit new permanent members. It seems unlikely, however, that such a change could be effected without amendment of the Charter.^{39a}

Periodic meetings of the Security Council attended by high officials of the member governments to consider major problems of peace are expressly provided for in the Charter. The twenty-year programme for peace presented by the Secretary-General in June 1950 urged such meetings.⁴⁰

The strength of the United Nations eventually depends upon the support of world public opinion. Efforts have been made to develop a favourable world opinion by the use of the radio and the distribution of publications, but there is no assurance that this information reaches the peoples in all countries. In principle it would seem that member states should be obliged to make decisions and recommendations of the principal organs of the United Nations available to their publics.^{40a}

The basic obstacles to disarmament and collective security are not inadequacies of United Nations machinery, but the unfavourable conditions of international politics.

^{39a} C.S.O.P., 10th Report, pp. 4, 32, 243.

⁴⁰ Art. 28 (2). *Year Book of the United Nations*, 1951, pp. 189-93; Daniel S. Cheever and H. Field Haviland, *Organising for Peace*, (Boston; Houghton Mifflin, 1954), p. 373.

^{40a} C.S.O.P., 10th Report, pp. 10, 50, 99, 160.

The problems of ameliorating mutual suspicion of aggressive intentions, of cultivating the practice of tolerance and mutual respect among divergent ideologies, and of reducing international tensions do not depend upon United Nations procedures, though Assembly debate can, according to its tone, contribute to their solution or to their aggravation. Education of public opinion on the nature of international relations and careful diplomacy to solve the serious controversies left by World War II are necessary to create an atmosphere favourable to disarmament. Experience indicates that disarmament usually follows rather than precedes political settlements.⁴¹

If the members had the will, they could within the Charter increase the capacity of the United Nations to exercise the power of the word and the law, and through them the power of the purse and the sword. With such increase in its capacity, states would have confidence in collective security and would agree to reduce armaments.^{41a}

The Veto and Universality of Membership

With respect to the veto, it seems clear that neither the United States nor the Soviet Union would be likely to accept an obligation to use their forces in collective security action without the consent of their own governments. Such an obligation was proposed in the European Defence Community agreement. This would have subordinated the military sovereignty of the members to the supranational authority, but it was not ratified even though some states modified their constitutions to permit such subordination.⁴²

⁴¹ Quincy Wright, *A Study of War* (University of Chicago Press, 1942), vol. 2, pp. 800-01; C.S.O.P., 10th Report, pp. 8, 44, 59, 218.

^{41a} C.S.O.P., 4th Report, *Security and World Organization*, New York, November, 1943, p. 32 ff; 5th Report, *Security and Disarmament Under the United Nations*, New York, June, 1947; 9th Report, *Charter Review Conference*, and accompanying paper on Disarmament by David F. Cavers, pp. 130 ff.

⁴² Jonkheer, H. F. van Panhuys, 'The Netherlands Constitution and International Law', *American Journal of International Law*, vol. 47, Oct. 1953, p. 537, 549, ff.

The United States has urged elimination of the veto from recommendations by the Security Council in respect to pacific settlement of disputes and to the admission of new members, but the Soviet Union has shown no disposition to accept such amendments.

In view of the developing practice utilizing recommendations of the General Assembly in dealing with disputes, collective security measures, and regional arrangements, the veto in the Security Council on these matters has diminished in practical importance. It has been pointed out that states could by supplementary agreements under Article 51 of the Charter oblige themselves to accept General Assembly recommendations, thus giving them the force of Security Council decisions.⁴³

In respect to the veto on the admission of new members, the issue has become less acute since the admission of sixteen applicant states by the tenth session of the General Assembly and others subsequently. Mongolia and Switzerland; the divided states of Germany, Korea, and Viet Nam; and continental China remained outside the United Nations in 1959, but their admittance depended on difficult diplomatic settlements rather than on elimination of the veto.

The requirement of great power consensus on selection of a Secretary-General and on Charter amendment is difficult to avoid if the United Nations is to function as a universal organization. It would appear, however, that many of the problems raised by the veto can be solved without formal amendment of the Charter.

Assembly Voting

The Charter provides that each member of the General Assembly shall have one vote and that the General Assembly shall adopt its own rules of procedure. The steady increase of the responsibilities of the General Assembly in the field of collective security and its responsibility in voting the

⁴³ C.S.O.P., 6th Report (cit.) and Sen. Con. Res., 52 (Thomas-Douglas), 81st Cong., 2nd sess., Sen. Rep. 2501, Sept. 1950, p. 25 ff.; Hearings, *Revision of United Nations Charter*, Feb. 1950, p. 3 ff.

budget have drawn attention to the inequity of a voting procedure giving an equal vote to members who share little of this responsibility and contribute little to the budget. Numerous proposals for weighting votes in accord with population, financial contributions, national income, or other criteria have been made.⁴⁴

It has been suggested, for example, that votes on the budget might be weighted by the square root of the annual assessment of members, a system which would make the difference between the lowest and the highest weights 1 to 28 not 1 to 833 as would be the case if the assessments were taken directly. So also it has been suggested that votes on resolutions intended to manifest world opinion might be weighted by the square root of the population of members, a system which would make the difference between the lowest and highest weights 1 to 45 not 1 to 2,025 as would be the case if population were taken directly. Resolutions with legal effect, such as determinations of the assessment scale; Charter amendment; and election of Councils, judges, and the Secretary-General might be counted without weights as at present. Such a scheme would present difficulties in classifying the types of resolutions and would probably be resisted by the smaller states whose relative influence would become less. Like any scheme of weighted votes, it would run counter to the tradition of equality of states, yet it would make General Assembly resolutions a more accurate indication of world public opinion and would increase the willingness of the larger states, who have to pay a larger share of the costs, to attribute larger powers to the United Nations. Such a result would benefit the smaller states which gain the most, in respect to both security and economic progress, from an effective United Nations.⁴⁵

⁴⁴ Clark and Sohn, above, Note 12, and C.S.O.P., Ninth Report, *Charter Review Conference* and accompanying papers by Louis Sohn (p. 77 ff.) and Catherine Senf (p. 107 ff.); 10th Report, pp. 5, 35, 228 and minority Report by William R. Frys and Hans Kohn, p. 236.

⁴⁵ Catherine Senf, 'A Proposal for Weighting Votes in the United Nations Assembly', above Note 44.

While it is possible that the General Assembly could permit the reporting of votes according to some scheme of weighting on certain types of resolution, it does not appear that such a scheme could become effective, especially in regard to budgetary matters, without amendment to the Charter.

International Law

Secretary of State Dulles urged a strengthening of the law guiding the members and organs of the United Nations,⁴⁶ as indeed did Secretary-General of the United Nations Hammarskjöld in his first report to the General Assembly.⁴⁷ The obligation to observe international law seems to be implied by the first, second and seventh paragraphs of Article 2 of the Charter, referring respectively to sovereign equality, the fulfilment of obligations and domestic jurisdiction. Both general international law and the Charter require that members observe the rules and principles of general international law, of the Charter and of treaties to which they are parties, and that the interpretation and application of these rules and principles is an international question not within the domestic jurisdiction of any state in the sense of Article 2 (7). As suggested in earlier chapters, the United Nations would be strengthened if the meaning of certain terms of the Charter, especially those in Art. 2 (7), 39, 56, and 73 were clarified with due consideration to the danger of permitting a constitutional instrument, such as the Charter, to become too rigid and unadaptable.

The Charter provides facilities for developing international law through the studies of the International Law Commission and the Human Rights Commission, and the precedents of the International Court of Justice. Such studies and precedents may eventually lead to codification of areas of international law through general conventions open to ratification by states as was attempted in the Geneva Conference on the regime of the seas in 1958. Experience, however, indicates that, unless juristic

⁴⁶ See Note 5 above.

⁴⁷ *United Nations Bulletin*, Aug. 15, 1953, XV, p. 136.

activity and political discussion has achieved a high degree of consensus, such efforts may result in disagreement or in so few ratifications that the law is left less certain than it was. The Charter provisions seem adequate in this field, though larger appropriations for the Commission and more use of the Court would contribute to their capacity to develop international law. The problem is that of achieving political consensus among states, most of which are dissatisfied with aspects of the *status quo*, on certain general principles.⁴⁸

Economic and Social Activities

It has been suggested that the 'non-political' activity of the United Nations might be more emphasized and more separated from the 'political activity'. It is argued that such activities as technical aid to under-developed areas, peaceful use of atomic energy, financial stabilization, trade expansion, health, agriculture, labour standards, and education if effectively conducted by the United Nations will gradually build a sense of world community among the people that benefit from these services. This will provide the basis for effective action in the fields of collective security and disarmament.

Economic and social activities, however, as pointed out in Chapter I, are not without political implications and their development is hampered by political tensions and iron curtains. Furthermore, a government which wishes to increase the loyalty of its people to the nation may wish them to receive services which they deem valuable from the national government rather than from an international organization. Observers in the field of technical assistance point out that recipient governments have sometimes sought popular support by resisting conditions attached to such assistance which would impair the national sovereignty.

⁴⁸ See Ch. 1, sec. 7 above. For criticism of the opposition of the United States government to the United Nations convention on privileges and immunities and to the development of international law by multi-lateral treaties in the field of human rights and other fields normally within the jurisdiction of the states of the federal system, see C.S.O.P., 10th Rep., pp. 9, 49, 155, 168.

It is also true that on occasion such governments have sought popular commendation because of their success in obtaining increased technical assistance. In the United States the Bricker amendment movement was more worried about national commitments in the field of human rights, and economic and social policy than it was about commitments on such political matters as disarmament, pacific settlement, and collective security. The 'political' issue of nationalism versus internationalism is therefore involved in these 'non-political' activities perhaps even more than in 'political' activities.

It seems clear, therefore, that United Nations activities in the field of international peace and security and those in the field of economic and social advancement are interdependent and must progress together, as they have, within the United Nations. It also seems clear that the functional decentralization of this work, inherent in the relatively independent position of the Specialized Agencies, though it may result in some overlapping of activity, on the whole promotes progress in the particular fields. States not interested in a field do not join the Specialized Agency interested in it, and so do not hamper effective co-operation by those who are.

The structure of the Economic and Social Council and the Specialized Agencies, their powers and their relationships, are doubtless susceptible of improvement⁴⁹ but the main problem in their more successful functioning appears to be the willingness of the member nations to give them greater financial and political support. This does not require Charter amendment.

5. *Opportunities and Risks of a Review Conference*

It is clear that a review conference would present both opportunities and risks. While it is unlikely that any major

⁴⁹ For proposals to strengthen the Economic and Social Council and to co-ordinate economic assistance to underdeveloped areas through a United Nations Development agency, see C.S.O.P., 10th Rep., pp. 8, 45, 185, 193, 200, 234.

amendment of the Charter can be made for a long time because of the probability that some one of the great powers would veto it, minor amendments eliminating some ambiguities and inconsistencies, and improving some procedures might be achieved and might facilitate the functioning of the United Nations. Furthermore, debate in a review conference might clarify the attitudes of governments and peoples toward the United Nations and might point the way toward negotiations and practical interpretations gradually moderating tensions in the world.

It is also possible that such a conference, even though it did not bring about amendments, might manifest such an overwhelming opinion on certain points that the policies of opposing sides in world politics would be influenced toward positions permitting of prolonged peaceful co-existence.

Most important of all might be the influence of such a conference in informing world public opinion of the realities of the present situation and the possibilities of improving it. The San Francisco Conference may have contributed to some optimistic illusions because it came at a time when a pressing external danger compelled the participating nations to work together, in spite of the inherent disagreements which have since become serious. Realistic debate in a new conference might indicate more adequately the present opportunities and limitations of the United Nations and might moderate some popular demands for settlements unobtainable under present conditions.

A world public opinion aware of the actual conditions of the world, of its complexities and conflicts, of the contributions which the United Nations with its present structure can make toward gradually realizing the purposes and maintaining the principles of the Charter would in itself be an important contribution toward the functioning of the United Nations even if the Charter is not amended.

These opportunities must however be weighed against the risks of a conference.

Opinion in certain countries might be aroused to unrealistic hopes of what such a conference may achieve.

The failure of the conference actually to change the Charter in ways which bodies of opinion have come to regard as essential might result in feelings of frustration and a reaction of utter disillusionment, perhaps followed by a wave of isolationism.

The clash of opinions and convictions in such a conference, not only between representatives of the free and the Soviet worlds, but also between representatives of imperial and recently emancipated states, and between other groups in the free world, might become extreme. Advocates of world government might oppose advocates of greater protection to national sovereignty and domestic jurisdiction. Advocates of a more extensive reliance upon law might oppose advocates of a more extensive reliance upon political, negotiation and conciliation. Advocates of an international stand against violations of human rights might oppose advocates of the unfettered exercise of national sovereignty in this field. Advocates of a more exclusive attention to the prevention of war and to collective security might oppose advocates of greater attention to social and economic co-operation. Advocates of regional arrangements independent of the United Nations might oppose advocates of universal collective security subordinating regional arrangements. All of these clashes of opinion and policy might so confuse the public that it would rely less rather than more on the United Nations. Instead of a more enlightened world public opinion frustration might settle upon the world.

Perhaps most dangerous of all would be the clash of opinions between those who would wish to reorganize the United Nations without the Soviet Union and its satellites and those who would insist on maintaining the principle of universality. The Soviet Union or its satellites might prove so intransigent and unco-operative in the conference that many states would come to believe that their elimination from the United Nations would be desirable. Yet it would be a misfortune for the peace of the world if the United Nations emerged from the conference as an alliance against this group. Such a result would be likely to be followed by withdrawal of the so-called neutral states and disruption of the United Nations.

A particular danger would develop if certain amendments were approved by a two-thirds vote of the conference giving rise to high hopes in many quarters, only to be subsequently vetoed by one of the great powers. Such a result might induce some states to withdraw and thus militate against the universality of the United Nations.

6. *Conditions Necessary for a Successful Conference*

Consideration of the opportunities and risks presented by a review conference suggests that the conditions under which the conference is held, the atmosphere developed in the world during its sessions, and the expectations permitted to develop among the representatives of governments and the peoples of the world, are of the utmost importance.

The conditions in respect to international tension at the time of the conference are of the greatest importance. If a relaxation of tensions should manifest itself at both sides of the iron curtain, if the arms race should slacken and particularly if agreements should be reached on such problems as Korea, Indo-China, Germany, and the representation of China, the prospects of achievement in the conference would be greatly improved.

Emphasis should be placed upon the educational value of the Conference rather than upon amendments to the Charter. The public should not be led to expect important revisions of the Charter. People should follow the proceedings of the conference in order to gain an understanding of the world, rather than to be shocked at the intransigence of statesmen. Private groups should be encouraged to weigh any prospects for desirable amendments against the prospects of their being unacceptable to one or another of the great powers. It is especially desirable that the great powers explore by diplomatic discussion their respective attitudes toward the conference, its objectives and its procedures before it is summoned. In the absence of prior agreement among governments on desirable changes, their instructed representatives will not be able at the conference to moderate or modify their positions.

The conference might have an important educational influence, even though the Charter remained substantially as it is. It might contribute to popular understanding of the value of the United Nations and of its points of strength and weakness, of its adaptation to changing conditions, of its possibilities of further strengthening without formal amendment, and of the role of public opinion and government action in such strengthening.

If a review conference is held, delegations should be aware that it is not a sovereign body and that its recommendations would become binding only 'when ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations, including all the permanent members of the Security Council.'⁵⁰ Consequently, debates should be conducted in a spirit of accommodation and with the object of achieving group consensus, rather than with the spirit of power politics and propaganda, utilizing political manoeuvres to gain a fruitless majority. This spirit would be particularly difficult to maintain if in certain countries the propaganda of organized groups and legislative resolutions developed strong pressures for the achievement of particular amendments.

The major condition for success of a Conference is a public opinion in the countries of the world, especially in the great powers, aware of the purposes and procedures of the present Charter, of the nature and role of the United Nations in world affairs, of the history of the adaptation of the United Nations to new conditions, of the processes by which it may be further developed, and of the probable utility and acceptability of proposed amendments of the Charter. Such a state of opinion, by influencing governments would reduce the risks and increase the opportunities of the review conference.

7. *Conclusion*

In analyzing the Charter, in discussing certain problems of interpretation, in indicating some adaptations during the

⁵⁰ Art. 109 (2).

first dozen years of its operation and in indicating the role of a possible review conference this book has attempted to maintain a balance between the practicable and the desirable, between realism and idealism. No one can be certain how the Charter will develop in the next decade, or what procedures, standards of interpretation or amendments are most likely to increase its service to a world which is certain to present new problems. It is doubtful, however, whether either radical change or abandonment of the Charter are alternatives to be seriously considered. Deliberation, balance, awareness, and timing are virtues. Too much haste in centralization is likely to arouse local or regional oppositions leading to nullification and war. Interpretation of the problem as that of achieving a goal rather than that of balancing opposing goals may encourage intransigence among groups whose co-operation is necessary for success. Concentration on the long run at the expense of the short run, on efficiency at the expense of compromise, on the general interest at the expense of particular interests, on organization at the expense of the opinion which sustains it, is dangerous, as is concentration on the opposite of each of these alternatives. Awareness of all aspects of the immediate situation and of the universal implications of that situation is essential. Progress requires continuous action in the education of public opinion, the negotiation of political agreements, the development of international law, and the administration of accepted economic and social purposes, but these methods are interdependent. Recognition of the critical moment when opinion and politics is ripe for legal or administrative action is the essence of all statesmanship, particularly of that greatest task of statesmanship — the organization of international peace with justice.

GL 341
WRI



107214
1 RSNAA

341
Wri

107214
अवाप्ति संख्या

Acc No. ~~10405~~

वर्ग संख्या

पुस्तक संख्या

Class No.

Book No.

लेखक

Author Wright, ~~Quincy~~ Quincy

शीर्षक

International law and
the United Nations.

~~10403~~

341
Wri

LIBRARY
LAL BAHADUR SHASTRI
National Academy of Administration
MUSSOORIE

Accession No. 107214

1. Books are issued for 15 days only but may have to be recalled earlier if urgently required.
2. An over-due charge of 25 Paise per day per volume will be charged.
3. Books may be renewed on request, at the discretion of the Librarian.
4. Periodicals, Rare and Reference books may not be issued and may be consulted only in the Library.
5. Books lost, defaced or injured in any way shall have to be replaced or its double price shall be paid by the borrower.